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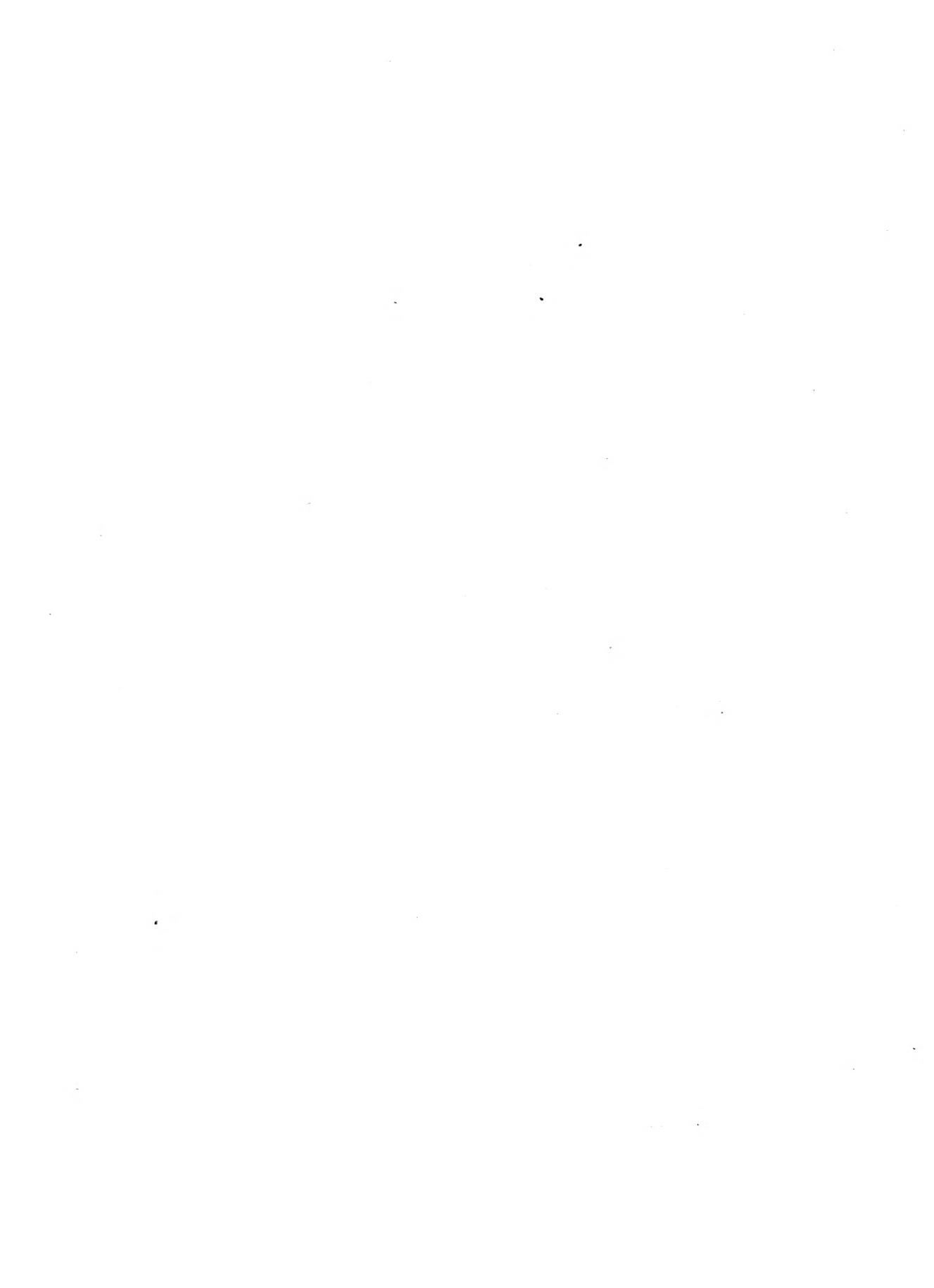
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T H E
E D I T O R *of this* E D I T I O N
T O T H E
R E A D E R.

IT may be proper to inform the Reader, that the Annotations, and Notes added to this Edition, are chiefly of two Kinds, and collected by two several Hands, *viz.* The one consisting only of References to the Year-Books, and other printed Reports, are set in the Margin, and were collected by Sir WADHAM WINDHAM, who was constituted one of the Judges of the King's Bench *Anno* 1660. The other being very curious Notes and Observations on the most remarkable and useful Writs and Divisions of the Book, were collected and digested into Method, by that great and good Judge Sir MATTHEW HALE, (who the 7th of *November* 1660. was made Lord Chief Baron of the Exchequer, and the 18th of *May* 1671. was constituted Lord Chief Justice of the King's Bench) and as these illustrate and explain many doubtful and abstruse Cases and Points in the Original, so the whole may well be denominated, *Sir Matt. Hale's Commentary on Fitz-Herbert's Natura Brevium.*

The Editor of this Edition to the Reader.

As to the Subject Matter of these Annotations or Commentaries, the Reader may observe Sir MATTHEW'S chief Regard therein was to illustrate and explain such Writs as relate to the following Particulars:

- I. To the Church and Church-Men.
- II. To the Regal State and Government.
- III. To real Rights or Estates in Lands or Offices.
- IV. To personal Rights in Goods and Chattels.
- V. To the Method of Processes and Proceedings.

And therefore we find his Annotations larger and fuller on such Writs, as do respectively relate to any of these Heads.

What remains to be observed as to the present Edition, is, that it has been carefully examined with the Original, that the References, and Cases cited have been corrected by the Books referred to; and that the Observations and Annotations have been duly placed and distributed under their respective Paragraphs, with proper Marks referring to the Subject Matter, Word or Sentence to which they do respectively relate.

This Book may well be said to contain a complete Body of the Common Law, and that not only in its Theory and Judicial Part; but also in its Praxis and Method of Proceedings, from the Forming of the Writ or Action, to the Judgment and Execution had thereupon.

T H E
P R E F A C E

Composed by the Reverend JUDGE

Mr. ANTHONY FITZ-HERBERT.

IN every ART and SCIENCE there are certain Rules and Foundations to which a Man ought to give Credit, and which he cannot deny.

In like Manner there are divers Maxims and Fundamentals in the Knowledge of the Common Laws of the Land, which a Man ought for to believe very necessary for those who will understand the same Law, especially at the Beginning of their Studies; for upon those Fundamentals the whole Law doth depend. For which Purpose, in Time past there was composed a very profitable Book, called The Register, which doth contain sundry Principles, by which he must be well instructed who would study the Law. And also for that Purpose was there composed by a Learned Man, a Book called Natura Brevium, which Book doth declare and set forth the Diversities and Natures of many Original Writs, with their Procefs; which Book helped much to the Understanding not only of The Register, but also of the Law of the Land. But because of late Time that Book hath been translated into the

The P R E F A C E.

English Tongue, and many Things are therein which are not according to the Law of the Land, and many other Things are omitted which are very profitable and necessary for the Understanding of the Law; for that Cause is this Work composed and published, wherein, if there be any Thing against the Opinion of the Sages who have the Administration of the Laws, the Request of him who hath taken the Pains to make the Treatise is, that they would correct and amend the same, as they shall see good, according to the Law.

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FITZ-HERBERT

H I S

Natura Brebium.

Writ of Right Patent.

A **T**HE Natures of the original Writs are to be shewed and declared, according to the Manner and Form as they are in Order written and set down in the Register, which shall be expressed and specified in Manner following:

And first, because the (a) *Writ of Right Patent* is in its Nature the highest Writ in Law, the Nature of that Writ shall be first declared, and where it lieth.

B This Writ ought to be brought of Lands or Tenements, and not of an Advowson, or of Common; and lieth only of an Estate of Fee-simple, and not for him who hath a lesser Estate, as Tenant in Tail, Tenant in Frank-marriage, or Tenant for Life: For these Tenants shall not have a *Writ of Right Patent*.

B

And

(a) *The Proceedings on a Writ of Right.*

1. *The Count or Declaration.*] See *Coke's Entries* 182. The Count in a *Writ of Right* of his own Seisin; and 23 E. 3. 8. a Count that it was his Right and his Heritage, which is thus entred: J. S. demands against J. N. the Manor of D. as his Right and Inheritance, by the Lord the King's Writ, &c. whereof he saith he himself was seized as of Fee and Right in Time of Peace, in the Time, &c. and offers to maintain that such is his Right, &c.

2. *The Defence and Mise, or Issue joined.*] The Defence is thus: And the aforesaid A. comes and defends the Right of the aforesaid J. S. the Demandant, and his Seisin, when, &c. And all, &c. and whatsoever, &c. and chiefly as concerning the Fee and Right of the Manor aforesaid, with the Appurtenances. Or thus: And thereof he puts himself upon the Great Assise of the Lord the King, and prays that Cognizance may be made, whether he hath greater Right to hold the Manor aforesaid with the Appurtenances to him and his Heirs, as Tenant thereof by Warranty (if he be Voucher) as

1c

Writ of Right Patent.

11 Aff. 17. And this Writ lieth properly where a Man is seised in Fee-simple, and another recovereth the Land against him by Default in a *Præcipe quod reddat*: Now he, who hath lost by Default, ought to sue this Writ. Or if a Man seised in Fee-simple die seised of such an Estate, and a Stranger doth abate, and entereth into the Land, and desorceth the Heir; the Heir may sue this Writ against the Tenant of the Freehold of the same Land, or an Assise of *Mortdaucester*. *Post*. 196.

(a) And

he holds the same, or the aforesaid Demandant to have the Manor aforesaid, &c. as he above demands. Or thus: And saith that he hath greater Right to hold, &c. And this he is ready to prove by the Body of his free Man, whose Name is J. R. present here in Court, in what Manner soever the King's Court here shall consider; and he is ready to prove it by another, if any Evil happens to J. R. that he be not present; and prays that Cognizance may be made, whether, &c.

And *Note*; The Order of joining Battle is according to the Form of joining the *Mise*, viz. That he has the most or best Right. 3 H. 6. 55. Nu. 7. And sometimes by his Defence he says, *And he is ready to defend his Right by his Body*. 30 Ed. 3. 20.

Note; Tender of the Demy or Half Mark is when the *Mise* or Issue on the Grand Assise is joined before. 22 Ed. 3. 8. See *Litt. Sect.* 514.

Note also; The Form of the Writ of Right is recited after the Count of the Demandant, for the Tenant to make his Defence *de novo*, and thereupon to vouch or plead in Bar; and so if the Demandant replies to the Bar, the Tenant shall make a Defence *de novo*, and plead to the Title. 21 H. 6. 26. per *Newton*.

3. *The Trial of the Grand Assise.*] *Note*, Herle granted an Inquest instead of the Grand Assise, for that the Tenements in Question were of small Value; and a Writ issued to the Sheriff to elect four Men, who were to elect an Inquest in Nature of the Grand Assise. 7 Ed. 3. 65. But it seems this was done by Consent; for otherwise it cannot be so done, although the Demandant prays it. 22 Ed. 3. 8.

The Electors ought to elect sixteen Knights *gladio cinctos* from amongst themselves and others; and if there are not so many Knights in that County, then by the Assent of Parties they may elect as many valiant Serjeants (*i. e.* Esquires) by whom they shall elect three (four) Knights from amongst themselves, and the Remainder of the Serjeants, and Process shall issue against all of them by *Venire facias*. 26 Ed. 3. 57.

Yet if at the first Day any of the four Knights makes Default, a *Habeas Corpus* shall issue, and not a *Summons*. *Dyer* 79.

Note; The Writ to the said Electors is, *That they chuse of themselves and others twelve, &c. yet not less than sixteen shall pass in a Grand Assise, Dyer* 98. and if there are not so many Knights in the same County, they shall elect them of the next County. See 33 Ed. 1. *Fitz. Trial* 97.

See the whole Form of joining Battle in 29 Ed. 3. 12. but in a better Form 30 Ed. 3. 20. And see there an *Imparlance* for the Demandant, after Battle tendered by the Tenant; and the different Forms of joining Battle between the Parties and the Champions. See 1 H. 6. 7. 13 *El. Dyer* 301.

4. *The Process in a Writ of Right*] In a Writ of Right the Tenant is not demandable till the fourth Day after the Return, except it be after the *Mise* or Issue joined; for in that Case he is demandable, and ought to appear on the first Day. 24 Ed. 3. 28. 29 Ed. 3. 18. per *Thorpe*. See also 1 Ed. 3. 1. where, after the *Mise* joined, the Parol was put without Day by the King's Demise; and at the Resummons, the Tenant was demanded the first Day, and for that he made Default, his Default was recorded, and on the fourth Day the Demandant pray'd Seisin, and had the Grand Cape.

The Demandant, after the *Mise* joined by Battle or Grand Assise, ought to offer himself in Person, or by Attorney, with his Champion, &c. and recite the Words of the *Mise* the first Day after the *Mise* joined, and pray that the Tenant be demanded; otherwise a *Non-suit* shall be awarded at the fourth Day. 42 Ed. 3. 15. But if after the *Mise* joined a *Petit Cape* be awarded returnable *quindæn Mich'*, &c. it is sufficient for the Demandant to offer himself the fourth Day. *Dyer* 103.

An *Essoin de malo lecti* lies only in a Writ of Right; and *Note*, in this Writ the Tenant cannot join the *Mise* by Attorney; and therefore, though the Tenant has an Attorney, yet he may be effoined. 19 H. 6. 61.

Note; The Process for the Grand Assise is a *Venire facias*, and not a *Habeas Corpus*; and yet if they do not appear thereon, they shall be taken. *Dyer* 270.

E (a) And this Writ ought to be brought against him who hath a Freehold at least in the Land, and not against Tenants for Years, Tenants by Statute-merchant, Tenants by *Elegit*, nor Tenants by Statute-staple; but ought to be brought against those Tenants who have an Estate in Fee-simple in the Lands, or an Estate-tail, or for Term of Life at the least.

F And this Writ is always Patent, and not Close, as other Writs are. And if the Lands be holden of other Persons than of the King or of the Queen, then this Writ shall be directed unto the Lord himself, of whom the Lands or Tenements are so holden, if the Lord be not out of the Realm; for then it shall be directed unto the Lord's Bailiff; and then the Chancellor of *England* ought to be certified thereof. And if a Man be elected Bishop, and a *Writ of Right Patent* is to be sued in the Court of the Manor of the said Bishop, the Writ shall be directed unto the Bailiffs of the Elect, and not unto the elect Bishop himself. And this Writ is as a Commission unto the Lord, or unto the Bailiff Vide post. of the Manor, that they shall do Right. And the Form of the Writ directed 2. E. unto the Lord himself is such:

G Henry by the Grace of God, &c. to Henry Earl of Lancaster, greeting: *We command you, that without Delay you do full Right to A. of B. of one Messuage and twenty Acres of Land (b) with the Appurtenances in J. which he claims to hold of you by the free Service of one Penny per Annum for all Service; of which W. of T. deforceth him; and unless you will do this, let the Sheriff of Nottingham* Vide 2. E. *do it, that we may hear no more Clamour thereupon for want of Right. Witnesses, &c.*

H And if the Lord be out of the Realm, then the Form of the Writ which shall be directed unto his Bailiffs shall be such:

The King (c) to the Bailiffs of H. Earl of Derby of the Honour of P. in the County of Derby, greeting: We command you, that without Delay you do full Right to A. of B. of one Messuage and twenty Acres of Land, with the Appurtenances in J. which he claims to hold of your said Lord by the free Service of doing Suit at the Court of your said Lord, of the Honour aforesaid in the County aforesaid, from three Weeks to three Weeks, for all Service, &c. as above.

I And by that it appeareth, that in a Writ of Right Patent he must express by what Services the Lands are holden, &c. And if the Lands are holden of the King or of the Queen, as of an Honour, or in Burgage, then the Writ shall be directed unto the King's or Queen's Bailiffs, and the Writ shall be such:

5. *The Judgment on a Writ of Right.*] Judgment final is given against the Demandant, and afterwards the Grand Assise is awarded, the Tenant tenders the Demy Mark for the Time, and no Seisin is found. *22 Ed. 3. 8. 34 Ed. 3. Judgment 256.* But if the Seisin be found, they shall inquire further of the Right. *3 Ed. 3. F. Droit 26. See Litt. Sect. 514.*

Judgment final was given against the Tenants, Baron and Feme, on a Default after the Mife joined, *viz.* That the Tenant (Demandant) should hold to him and his Heirs, quit of the

Baron and Feme, and of the Heirs of the Feme *22 Ed. 3. 17.*

(a) This Paragraph seems to be an Addition to *Fitzberbert*, and is contrary to B. and C. *supra*, and *Post. 5 C.*

(b) Note; In some Cases where Land is demanded, the Writ shall be *with the Appurtenances.* See *19 Ed. 2. Fitz. Bre. 844.* and so of an Advowson, *5 Ed. 3. Fitz. Bre. 748.*

(c) Because, although the Suitors are Judges, yet the Bailiffs shall make the Process. *Mich. 7 H. 8. Ret. 103. 2 Benl. fol. 5.*

Writ of Right Patent.

Henry by the Grace of God, King, &c. to his Bailiffs of Lincoln, greeting: We command you, that without Delay you do full Right to A. of B. of one Messuage with the Appurtenances in Lincoln, which he claims to hold of us by the free Service of one Penny per Annum for all Service, of which W. of B. deforceth him, that we may hear no more Clamour thereupon for want of Right, &c.

And if a Man sue a Writ of Right Patent of Lands or Tenements which are K holden by a Knight's Fee, then the Form of the Writ shall be: *Of one Messuage and ten Acres of Land, &c. which he claims to hold of you by the Service of one Knight's Fee for all Service.*

And the Writ of Right lieth of a Passage over the Water of Thames, and L of Pasture for one hundred Sheep, and of the Rent of one Pound of Ginger, thus: *Of one Messuage, ten Acres of Land, nine Shillings Rent, and Passage over the River Thames, and Pasture for one hundred Sheep, with the Appurtenances in W. and of the Rent of one Pound of Ginger, one Pound of Cinnamon, one Rose, one Pair of gilt Spurs, and of the third Part of one Garden, with the Appurtenances in N. which he claims to hold of us by the free Service of himself, together with his Partners, finding for us five Ships for our Passage at our Command, for all Service, &c.*

[2.] And if the Lands of any Lord be in the King for the Nonage of the Heir, A and a Writ of Right is to be brought in the Court of the Manor where the King hath committed the Wardship of the Lands to another, the Writ of Right shall be directed unto the Bailiffs of the Guardian to whom it is committed, or unto the Guardian himself, if he hath the Land in Ward in his own Right, and by reason of the Seigniorie that the Heir is in his Ward. And the Forms of the Writs in the Register are thus: *The King to the Bailiffs of the Guardian of the Land and Heir of A. of B.* Or thus: *To the Bailiffs of the Guardian of the Land of A. of B.* And this Writ is where the Guardian hath only the Wardship of the Land, and not of the Heir, &c. And unto the Guardian himself the Writ is, *The King to the Guardian of the Land and Heir, greeting: We command you, &c. which he claims to hold of the aforesaid Heir.* And if the Heir hath no Court for the Poorness of the Land, that it is of so small Value, then the Writ shall be directed unto the chief Lord, as chief Lord, and not as a Guardian; and then the Writ shall say, *And which he claims to hold of him, &c.* and shall not say as Guardian.

And it appeareth that a Man shall have a Writ of Right of a Knight's Fee; and the Writ shall be such:

The King to A. of B. greeting, &c. We command you that, &c. W. &c. of B the Service of one Knight's Fee, with the Appurtenances in W. which he claims to hold, &c. by the Service of one Pair of gilt Spurs for all Service, &c. or, by the Service of finding an Horseman or Footman to go with you in the Army of Wales at your own Expence and Cost, &c. for all Service. Or thus: *By the free Service of carrying your Writs at your own Expence and your own Cost within the County, for all Service.*

And there is an Order set in the Register, when a Man demandeth divers C Parcels of Land in his Writ which are of divers Natures, which Parcel shall be first specified in the Writ, and what Parcel shall be next unto that, and then what Parcel shall be next to that, and so of all the Parcels; and that appeareth by the following Paragraph:

Messuage,

Messuage, Toft, Mill, Dove-houfe, Garden, Land, Meadow, Pasture, Wood, Heath, Moor, Soil where Rufhes do grow, Marfb, the Soil and Wood where Alders grow, the Soil where Broom doth grow, Rent: This is the Order of the Parcels..

8 Aff. 1. 17.
16 Aff. 46.
See F. N. B.
123 H.
8 Aff. 24. in
which Assise
(Wood) was
put before Pa-
sture, yet
good, v. 7 E. 6.
Dyer 84.
3 Mar. 169.

And if a Man in his Writ will demand twenty Houses, and ten Acres of Land, and ten Acres of Meadow, and ten Acres of Pasture, and divers other Parcels; and afterwards in the same Writ he will demand the Moiety, or the third Part of one House, or of one Acre of Land, or of Meadow, or of Pasture; then the Form of the Writ is, to put in the Beginning of the Writ the whole Parcel, and in the End of the Writ the Moiety or the third Part, &c. thus: *That full Right, &c. of one Messuage, one Mill, one Garden, the Moiety of one Messuage, of one Acre of Land, excepting one Acre of Land in N. &c.* so as the Exception shall always be in the End of the Demand.

D And a Writ of Right may be brought against divers Tenants who hold their Lands severally; and then the Form of the Writ is; *The King to A. B. &c. We command you that, &c. you do full Right to A. of twenty Acres of Land with the Appurtenances in N. which he claims, &c. whereof F. deforceth him of ten Acres, and S. of three Acres, and C. of seven Acres of Land.* And so the Word [Land] shall be in the End to him that shall be supposed last Deforceor, &c.

E And if a Writ of Right be brought in the Court of any Bishop or Abbot, it shall be then directed to the same Bishop, thus: *The King, &c. to the Venerable Father in Christ William, by the same Grace Archbishop of Canterbury, Primate of all England, greeting: We command you that without Delay, &c. which he claims to hold of you by free Service, &c.*

And if it be directed unto an Abbot, then the Writ shall say, *Which he claims to hold of you, &c.*

And if in the Time of the Vacation of any Bishoprick a Writ of Right shall be brought in the Court of any Lands which are of the Bishoprick, which are in the King's Hands by reason of the Vacation of the Bishoprick, then the Writ of Right shall be directed unto the King's Bailiff, or unto the Bailiff of him who is the Bishop elect; and the Form of the Writ is such: *The King to the Bailiffs of C. of the Archbishoprick of York, greeting.* Or thus: *The King to the Bailiffs of H. (a) Elect of Lincoln, &c. greeting: We command you, &c. which he claims to hold of the aforesaid Archbishop.* Or thus, if it be directed unto the Bailiffs of the Bishop elect: *Which he claims to hold of your aforesaid Lord by Service, &c.*

F But the Lord may give Licence unto his Tenant to sue his Writ of Right in the King's Court, or the Common Pleas, before the Justices; and that as well after the Writ purchased and returned into the Common Pleas, as before the Writ purchased and sued. And the Form of the Writ, when it shall be sued in the Common Pleas by Licence of the Lord, shall be such: *The King to the Sheriff, &c. Command A. that justly, &c. he render to C. one Messuage with the Appurtenances in M. which he claims to be his Right and Inheritance, and whereof he complains, that the aforesaid A. hath unjustly deforced him, and*

(a) For he ought not to be named *Bishop* till Collation of the Pope, but shall be named only. Consecration, not even though he came in by *Elect.* 5 Ed. 2. Fitz. Brev. 800.

Writ of Right Patent.

Vide 4. D.

unless he will do this, and the aforesaid C. shall give you Security to prosecute his Suit, then summon by good Summoners the aforesaid A. that he be before our Justices at Westminster on the fifteenth Day of the Holy Trinity, to shew why he will not do it: And have you there the Summoners and this Writ. Witness, &c. Because I. the chief Lord of the Fee, hath thereupon remitted to us his Court. And so this Clause shall be put in the Writ after the *Teste*, &c. And if this Clause be omitted, and the Lord after the Purchase of the Writ send his Letter to the King that he is contented therewith, it is sufficient.

[3.]

And if such Clause, *Because the Lord hath remitted his Court*, were in the Writ, it is not material whether there were any Letter of the Lord in the Chancery, proving his Assent, or not. And the Form of the Letter of Licence, which shall be certified unto the King, is thus:

To the most excellent Prince Lord Henry by the Grace of God King of England, A Lord of Ireland, and Duke of Aquitain, the Bishop of Durham sendeth greeting, in Him by whom Kings reign and Princes bear Dominion. Because K. of S. having obtained our Leave, purposeth to implead W. in your Court before your Justices of the Bench by your Writ of Right, of one Messuage with the Appurtenances in J. which he holds of us, We signify to your Royal Highness by the Tenor of these Presents, that for this Time we have thereupon remitted to you our Court, saving to us otherwise the Right of our Seignory in the like Case, if it shall happen. In Witness whereof we have caused these our Letters to be made Patent. Dated at London the Day, Year, &c.

But if the (a) Tenant of any Lord sue such a Writ of Right in the King's Court without such Letter, and recover, it seemeth the Recovery is good, and the Lord shall not void the same nor the Tenant. Also it seemeth to stand with Reason, that if a Man hold of any Lord, as of a Seignory in gross, which is not any Manor, for which Seignory he cannot keep any Court; that then the Tenant ought to sue such Writ as before in the King's Court, and that the Lord shall not have Action, or other Means to annul this Act, because he hath not any Court to hold Plea for that there. And in the End of the Writ may be these Words, *Because the Lord hath remitted his Court, &c.* But if the Tenant will sue forth the Writ of *Præcipe in Capite* in the King's Court for such Lands as are holden of another Lord, (b) then the Lord shall have a Writ out of the Chancery directed unto the Justices of the Common Pleas, commanding them, that if it doth not appear unto them that the Lands are holden of the King, but of another, they shall proceed no farther on that Plea. For by this Writ the Plea supposeth the Lands to be holden of the King, and therefore he and his Heirs shall be concluded against the King for the Tenure, and the same shall be prejudicial unto the Lord of whom the Lands are holden: But by the other Writ he doth not suppose any Tenure in the Writ, and therefore there is great Diversity. *Tamen quere.*

Præcipe in Capite.
Post. 5. A.

And if a Man sue a Writ of Right directed unto the Lord of whom the Lands are holden, and he will not hold his Court to proceed upon the Writ; then the Demandant in the Writ of Right shall have a Writ directed unto the

(a) Yet see 6 Ed. 3. 22. He may come in and pray that it be inquired by the Inquest, &c.

(b) See 6 Ed. 3. 16. *Mag. Cbar. c. 24.* But the Tenant in a Writ of Right shall not alledge

this by way of Challenge, but only by way of Protestation, to save an Estoppel of the Tenure. 38 Ed. 3. 31.

Lord, commanding him to hold his Court, &c. and if he will not receive the Writ, nor do Right unto him, he may sue forth a Writ commanding him to do Right, and thereupon he may have an *Alias*, and a *Pluries*, and *Attachment*; and the Form of a Writ of *Attachment* is such:

The King to the Sheriff, &c. If A. shall give you Security, &c. then put, &c. Attachment. B. that he be, &c. as well to answer us as the aforesaid A. wherefore when we commanded the said B. by our Writ of Right, that without Delay he should do full Right to the aforesaid A. of one Messuage with the Appurtenances in N. of which T. deforceth him; the said B. little weighing our Command in this Behalf, hath maliciously suppressed our said Writ in favour of the aforesaid T. or thus, hath refused to receive our Writ, and to hold his Court, and to do Justice to the said A. in the Premises, in Contempt of us and of our Command, and to the great Damage and manifest Danger of disinheriting the said A. And have, &c. And upon that if the Defendant appear, he shall be put to answer, &c.

F But if the Lord of the Court hold his Court, but the Lord, or the Bailiff, or Officer will not do him Right, or delay him to have Right, or to make Process, &c. then the Demandant may shew unto the Sheriff of the County how he is delayed, &c. and pray the Sheriff to award such a Precept or Writ, which is called a *Tolt*, directed to his Bailiffs, by his Precept, to remove the Plea before him into his County; and upon that the Sheriff ought to award such a Precept to his Bailiff, &c. and to go unto the Lord's Court, and there remove the Matter before the Sheriff in his County. And the Form of the Precept is such:

Tolt on the Lord's Default, at the Plaintiff's Suit.

Post. 7. E.

Robert A. Sheriff of Norfolk, to Edmund C. the Lord the King's Bailiff of his Dutchy of Lancaster of F. greeting: Because I have received Information from the Complaint of John B. personally appearing at my County (to wit) on Monday next after, &c. in the Year, &c. held in the Shire-house at Norwich, that although he brought to J. P. and J. B. Bailiffs (of the said Lord the King of the Dutchy aforesaid) of F. aforesaid, the Lord the King's Writ of Right Patent directed to the Bailiffs of the said Lord the King of his Dutchy of Lancaster of F. in my said County, for the Purpose that they might do full Right to the said John B. of the Manor of F. with the Appurtenances, whereof John S. deforceth him; yet because the said Bailiffs favour the said J. S. in that Matter, and have hitherto delayed to do full Right according to the Exigency of the same Writ, I command you, on behalf of the Lord the King, firmly enjoining that you go in your proper Person to the Lord the King's Court of his Dutchy aforesaid of F. and remove the Plea which is there between the said John B. and John S. by the said Writ into my County next to be held, and summon by good Summoners the aforesaid John S. that he be at my County of Norfolk, to be held on Monday next coming at N. in the Shire-house to answer the aforesaid John B. thereupon; and have you there the aforesaid Plea, the Summoners, and this Precept. Dated in my County at Norwich in the Shire-house, on Monday next after, &c. in the Year aforesaid.

G And by this it appeareth, that the Demandant may remove the Matter out of the Lord's Court into the County Court: And it seems reasonable that the Tenant may also remove the Matter by a *Tolt* made by the Sheriff, supposing that the Bailiffs of the Court do favour the Demandant in the Matter. *Tamen quere*; for the Rule in the Register is, that the Tenant may remove the Plea out of the Lord's Court for good Cause before the Justices in the

[4.]
Tolt at the Tenant's Suit.

Common

Common Pleas; but the Demandant cannot so do, because he may have a *Tolt* from the Sheriff to remove it out of the Lord's Court into the County Court.

Recordare.

But when it is in the County, he may remove it thence by a *Recordare* before the Justices in the Common Pleas. And by this Rule it seems, that the Tenant cannot remove the Plea by a *Tolt* out of the Lord's Court into the County, but he ought to remove it into the Common Pleas by a *Recordare*, &c. and that for good Cause shewed in the Writ. And the Writ of *Recordare* is such: *The King to the Sheriff, &c. greeting: We command you, that taking with you four discreet and lawful Knights of your County, you go in your proper Person to the Court of A. of B. and in that full Court you cause to be recorded the Plea, which is in the same Court by our Writ of Right, between W. Demandant and S. Tenant, of one Messuage with the Appurtenances in B. and have you that Record before our Justices at Westminster from the Day of Saint Michael in fifteen Days, under your Seal and the Seals of four lawful Men of the same Court, who intermeddled in that Record, and prefix the same Day to the Parties, that they may be then there to proceed in that Plea, as it shall be just; and have you there the Names of the aforesaid four Men and this Writ. Witness, &c.* And in the End of the Writ of *Recordare* the Cause of the Removal shall be put in thus: *Because the Messuage of the aforesaid T. after the Death of the said T. if the said W. die without Heir of his Body, ought to descend to the Bailiff of the Court aforesaid, who holds the Pleas of the same Court, as Cousin and next Heir of the said W. and the said W. hath deraigned That against the said T. in the Court aforesaid; wherefore because the same Bailiff favoureth the said W. in the aforesaid Plea, as it is said, let Execution of this Writ be done, if the Cause be true, and the aforesaid S. prays this, and otherwise not.*

V. 3 H. 4. 14.

12 H. 4. 13.
& 17.

1 H. 7. 30.

1 & 2 P. & Ma.

Dyer 111.

Pone.

35 Ed. 3.

Droit 30.

Post. 7. E.

Recordare.

Post. 7. E.

And there are many other Cases put in the Register of Remover of this Plea into the Common Pleas at the Suit of the Tenant. As if the Lord take upon him for to maintain the Matter, to have Part of the Land. Or if the Tenant alledges Bastardy, or plead a Foreign Plea, or join the Mife upon the Grand Assise, &c. And when the Demandant hath removed the Plea by *Tolt* into the County, then the Demandant may remove the same (a) into the Common Pleas by a *Pone*, without expressing any Cause in the *Pone*. But the Tenant cannot remove it, without a Cause be expressed in the *Pone*.

And it is a Rule, that a *Recordare* is not given to remove any Plea in a Writ of Right, but for the Tenant. But *Pone* is given for the Demandant, but that ought to be out of the County Court. And the Form of the *Pone* for the Demandant is such:

The King to the Sheriff, &c. greeting: At the Petition of the Demandant put the Plea which is in your County by our Writ of Right between A. Demandant and T. Tenant, of one Messuage with the Appurtenances in T. before our Justices at Westminster on the Octave of the Holy Trinity next coming, and summon by good Summoners the aforesaid T. that he be then there to answer the aforesaid A. thereupon; and have you there the Summoners and this Writ.

And here is not said [and another Writ] because the original *Writ of Right Patent* doth remain with the Demandant, and not with the Sheriff, &c. as do other original Writs.

(a) Note; In such Case the Plea may be removed into *E. R. per Harkford*; and there they may proceed thereon. 11 H. 4. 49.

Writ of Right Patent.

9

And if the Tenant will remove the Plea out of the County by *Pone*, he ought to shew some Cause in the Writ; and the Writ is such: *The King to the Sheriff, &c. Put the Pleaint which is in your County, &c. before our Justices at Westminster in fifteen Days of the Holy Trinity next coming, &c. as above; and tell the aforesaid A. that he may be then there, if he will, to prosecute his Pleaint thereupon against the aforesaid T. and have you then there this Writ. Witness, &c. Because the aforesaid A. hath married W. the Kinswoman of the Sheriff, &c. wherefore because the Sheriff favoureth, &c. let Execution be done, &c. as above.*

E And in a Writ of Right in a Court Baron, if a Foreign Plea be pleaded, or the Mife is joined to be tried by the Grand Assise; (a) now if the Bailiffs will proceed, the Tenant may have a Prohibition directed unto them, which shall inhibit the Bailiffs to hold the Plea. Or he may inhibit the Lord himself, that he shall not hold the Plea, &c. And also such Writ shall be directed unto the Sheriff, forbidding him to hold Plea in the County Court upon the Writ of Right after such Pleas pleaded; and if they do proceed, he may sue forth an *Alias*, and a *Pluries*, and an *Attachment* against them. Prohibition.

F And it is to be known, that if the Lord or Bailiffs do cease to proceed in the Plea by reason of such Writ of Prohibition, then when the Justices in Eyre come into the County for all Pleas, the Demandant may come into the Chancery by the Record of the Writ of Prohibition, which issued before out of the Chancery, which is always inrolled in the Chancery; and thereupon he shall have a Writ directed unto the Sheriff to summon four Knights to chuse the Grand Assise upon the Writ of Right which is in the Lord's Court, or in the County. And the Writ of chusing the Grand Assise shall be such:

(b) *The King to the Sheriff, &c. greeting: Summon by good Summoners four lawful Knights of your County, that they be before our Justices at the first Assises, when they shall come into those Parts, to elect twelve of the lawful Knights of the Neighbourhood of N. who may better know and will speak the Truth, to make Cognizance of our great Assise between A. Demandant and B. Tenant, of one Messuage with the Appurtenances in N. whereupon the same B. who is Tenant, hath put himself upon our great Assise, and hath prayed that Cognizance may be made, whether of them hath greater Right in the Messuage aforesaid, and summon by good Summoners the aforesaid B. that he be then there to hear that Election; and have you there the Names of the aforesaid Knights and this Writ.* And when [5.]

A the Plea is in the Common Pleas, then this Writ of *Magna Assisa eligenda* shall issue out of the Common Pleas, and is judicial: But in the Case before it shall issue out of the Chancery without paying a Fine. And if the Deman-

B dant sue a Writ of *Præcipe in Capite* in the Common Pleas for Lands holden of another Lord than of the King, then the Lord of whom the Lands are holden, may sue forth a Writ directed unto the Justices of the Common Pleas, Ant. 3. D.

(a) See this otherwise in the Court of Antient Demefne, where in a Writ of Right Close sued, in Nature of a Writ of Right Patent, a Jury was returned there, instead of the Grand Assise. 2 Mar. Dyer 111.

(b) Note: The Knights ought to be girded with Swords, otherwise it is Cause of Challenge. See Trin. 6 Eliz. Moor's Reports 67. Squire and Read.

Writ of Right Patent.

rehearsing how that the Land is holden of him, commanding them to proceed no further, &c.

Ant. 1. B.

And as before is said, none can sue or maintain such *Writ of Right Patent*, C but they who have an Estate in Fee-simple, as Tenant in Fee-simple, or Abbot, or Prior, or Bishop, or Master of an Hospital; and a Body Politick, as Mayor and Commonalty, or Bailiffs and Commonalty, &c. and such Bodies Politick may have such Writs for their Possessions. But Parsons, Vicars, or Chantery Priests or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this *Writ of Right Patent*, but another Writ, which is called *Juris Utrum*; the Nature of which Writ shall be after expressed.

If a Man bring a *Writ of Right Patent* as Heir unto his Ancestor, he ought D to lay the Seisin and Esplees, as in Pernancy of the Profits of the Lands in his Ancestors. And if an Abbot, Bishop, or such Body Politick, bring such Writ, he ought to lay the Seisin of the Esplees as in Pernancy of the Profits in themselves, or in their Predecessors. And for the Residue of this Matter touching the *Writ of Right Patent*, and the Count, and the Bars, and all the Circumstances thereof, see the Title of *Droit* in the Abridgments.

Præcipe in Capite.

Ant. 3. D.

And note, That a Writ of Right, which is called *Præcipe in Capite*, is no E *Writ of Right Patent*, but is a Writ of Right Close, and shall be directed unto the Sheriff of the County, and lieth where the King's Tenant, who is seised in Fee-simple of Lands holden of the King in Chief as of his Crown, and not of the King as of any Honour, Castle, or Manor, but merely of the King as of his Crown, who is a Lord in Grofs, (because it is holden of him who is always King) is deforced, &c. And this Writ is as high in its Nature F as the *Writ of Right Patent*; and no Person can sue this Writ, if he hath not an Estate in Fee-simple of his own Possession and Seisin, or of the Seisin of his Ancestor or Predecessor.

31 H. 8.

Dyer 44, 45.

And it lieth also where Tenant in Fee-simple of any Lands or Tenements, G who holdeth such Land or Tenement of the King in Chief as of his Crown, and not of the King as of any Honour, Castle, or Manor, loseth his Lands or Tenements by Default in a *Præcipe quod reddat*: Now he or his Heir may have this Writ of Right, of *Præcipe in Capite*, against the Tenant of the Freehold of those Lands or Tenements. And this Writ shall be Close, and H shall be directed unto the Sheriff, and returnable in the Common Pleas before the Justices there: And in this Writ he ought to lay the Seisin in himself, or in his Ancestor or Predecessor, in the same Form as he shall do in a Writ of Right.

The King to the Sherfff of Nottinghamshire, &c. Command A. that justly, I &c. he render to B. one Messuage with the Appurtenances in D. which he claimeth to be his Right and Inheritance, and to hold of us in Chief, and whereof he complains that the aforesaid A. unjustly deforceth him; and unless he will do this, and the aforesaid B. shall give you Security to prosecute his Claim, then summon by good Summoners the aforesaid A. that, &c. Or thus, if an Abbot or spiritual Person sue the Writ: Which he claims to be the Right of his Church of Saint Mary of N. and to hold of us in Chief, and whereof he complains, &c.

And

- K** And by this Writ it fully appears, that Lands which are holden of the King as of an Honour, Castle, or Manor, are not holden *in Capite* of the King, because that the Writ of Right in such Case shall be directed unto the Bailiff of the Honour, or Castle, or Manor, to do Right, &c. But when the Lands are holden of the King as of the Crown, they are not holden of any Manor, Castle, or Honour, but merely of the King as King, and of the King's Crown as of a Seigniorie (a) by itself in Grofs, and in Chief above all other Seigniories. And thereof it followeth, that there are many Errors and erroneous Opinions at this Day in the suing of Liveries, and finding of Offices, and determining which Lands shall be taken to be holden of the King in Chief, and which not; and therefore *quare* to know the Truth.
- L** In *Præcipe in Capite* the Tenant shall not plead, that the Tenements are not holden of the King, although the Writ doth so suppose; but he ought to take the same by Protestation, and plead other Matter in Bar, if he have any Matter to plead.
- M** And in a Writ of Right he ought to count of his own Seifin, or of the Seifin of his Ancestor: And if he count of the Seifin of his Ancestor, he may alledge the Seifin in the Time of King *Richard* the First, but the Seifin is not traversable: But the Tenant may tender a Demy Mark to inquire of this Seifin, &c. And if it be found with the Tenant, that the Ancestor was not seised, the Demandant shall be barred. But if the King be Party Demandant, the Tenant cannot tender the Demy Mark to inquire of the Seifin, but ought to plead in Bar; and there the Tenant shall have no Impar lance without the Assent of the King's Serjeants. And it seems reasonable, if the Tenant in a *Præcipe quod reddat* lose by Action tried, that yet he shall have a Writ of Right.
- N** And so if the Demandant be barred in an Assise of *Mortdauncester* brought by him, or other real Action, as a Writ of *Entry sur Disseifin*, &c. or the like Writ, and is barred by Action tried, yet he shall have a *Writ of Right Patent*, or *Præcipe in Capite*, if the Lands be holden of the King in Chief: And so it seemeth, if a Man lose by Default in a Writ of Right
- after the Mife joined maketh Default, final Judgment upon that Default shall not be given, but a *Petit Cape* shall issue; for peradventure he may save his Default: But Judgment final, where it ought not to be in a Writ of Right, shall bind until it be reversed.

Bro. Livery
57.
Prerog R.
29 B.
V. 21 E. 3. B.
Tenures, 16.
33 H. 8. 52.
there are some
Honours of
which Lands
are holden in
Capite.
Dyer 45.
38 E. 3. 13.
Br. Droit de
recto 9.
F. Droit 5.

Litt. 114.
4 Co. 43.
[6.]
5 Co. 86.
If the Tenant

(a) Note; M. 30 H. 8. Dyer 44. A Tenure in Chief (1.) ought to be held of the King, and created by him. (2.) It ought to be held of him as of his Person. And (3.) per Dyer 45. The King by no Means can grant or sever the Tenure and Seigniorie in Chief from the Crown. The King purchases a Mesnalty, yet the Tenant shall hold as before: So if he forejudge the Mesne, &c. he shall hold as the Mesne held. The King grants Land in Tail, and after con-

firms it to hold of him by a Penny, &c. The Grantee shall notwithstanding hold it in Chief, although there are these Words added, *And not in Chief*; and if he grant the Reversion, both the Tenure and the Services shall remain to the King. See the Tenure of the Honour of *Plympton*, and 36 H. 8. Dyer 58. The Tenure of the Honour of *Gloucester*; and Note, The Tenure of the Principality of *Wales*, is not the same. Dyer 344.

Writ of Right in London.

(a) before the Mife joined, yet he fhall have a Writ of Right againft him who recoverth. But after a Mife joined it is otherwife; for then upon Default after Ifsue joined, the Judgment fhall be final, as well againft the Demandant by his Nonfuit, as againft the Tenant, if he make Default after.

This muft be intended of a Land. And a Man fhall have a *Writ of Right Patent* of a Rent, as well as of A Rent-Service, for of a Rent Charge or Seck no Writ of Right lies; *per Herle.* 45 *Ed.* 3. F. *Droit* 32.

Writ of Right in London.

W RIT of *Right Patent* in *London* lieth of Lands or Tenements within the City, &c. by him who claims an Eftate in Fee-fimple in the Lands and Tenements, and not by him who claims an Eftate for Life, or in Tail, or in Dower, or by the Courtefy. For if Tenant in Fee-fimple lofeth his Lands in *London* by Default, or by Verdict, it feemeth that he fhall have

* *Judgment* in a Writ of Right, *vide ant.* pag. 1. and 2. & *infra* †.

(a) The Demandant imparls on the Voucher of the Tenant and returns (into Court) and the Tenant was demanded and made Default, and Judgment given againft him, *Because he departed in Contempt of the Court.* 38 *Ed.* 3. 13. and fo of the Demandant if he imparls, &c. after the Mife joined. 13 *Ed.* 3. F. *Judgment* 169. and the like of the Tenant, 11 *Ed.* 3. F. *Judgment* 126. Judgment final is given on a Departure in Deftight of the Court. 53 *Ed.* 3. F. *Judgment* 252. But not on a Default in a Petit Cape after the Mife joined. 12 *Ed.* 2. F. *Judgment* 235. So Judgment final is given on a Confeflion after the Mife joined, but not before. 13 *H.* 4. F. *Judgment* 245. 33 *Ed.* 3. *ibid.* 253.

Where the Tenant vouches, final Judgment fhall not be given againft the Vouchee, except he be Tenant to him that vouches him, though it be after the Mife joined; *per Bingham.* 13 *Ed.* 3. *Judgment* 152. *contr.* 14 *Ed.* 3. *ibid.* 154. See Judgment againft a Prebend. 12 *Ed.* 3. *Judgment* 163. againft a Baron and Feme; and yet the Feme fhall afterwards have a *Cui in vita.* 33 *Ed.* 3. *ibid.* 252. It fhall not be againft the King. *Ibid.* *Judgment* 232. See Judgment final given after the Champions were brought, and at another Day given, the Tenant made Default; but the Demandant appeared with his Champion. 29 *Ed.* 3. 12, and fo is 1 *H.* 6. 7.

† *Note*; If the Tenant tenders the Mife, either by Grand Affife or Champion, and the Demandant imparls thereupon, and at the Day the Tenant makes Default; Judgment final fhall be given, *Because he departed in Contempt of the Court.* 3 *H.* 6. 55. 10 *H.* 6. 2. and fo is the Cafe to be intended. 44 *Ed.* 3. 28. *Vide fupra* *. So if after the Mife is joined by Champion, the Tenant appears without his Champion. 12 *H.* 7. 10. But if the Mife is joined by Grand Affife or Battle, and afterwards the Plea is put without Day, *i. e.* difcontinued; and then upon a Refummons the Tenant afterwards makes Default, Judgment final fhall not be given. 3 *Ed.* 3. 5. 1 *Ed.* 3. Also if the Mife is joined by Grand Affife, and at the Day of *Nifi prius*, &c. the Tenant makes Default, a Petit Cape fhall ifsue; and if at the Return thereof the Tenant does not come in, nor fave his Default, Judgment final fhall (not) be: But if the Demandant makes Default at any Day after the Mife joined, Judgment final fhall be given againft him. See 12 *H.* 7. 10. or 20. *Dyer* 98, 103. 5 *Co.* 86. a. See 3 *Ed.* 3. 29. If in a Writ of Right againft Baron and Feme, they tender the Mife, and the Demandant imparls thereupon, and afterwards makes Default, Judgment final fhall be given.

Note; Where it was againft Baron and Feme, and before the Mife accepted. 11 *Ed.* 3. F. *Judgment* 126. 13 *Ed.* 3. *ibid.* 129. *acc.* where the Termor was received. And 14 *Ed.* 3. 151. *Simile.* *Vide pofl.* 11. D. E.

a Writ of Right of those Lands directed unto the Mayor and Sheriffs, and it shall be in the Nature as a *Writ of Right Patent*. And the Form of the Writ is such :

C *The King to the Mayor and Sheriffs of London, greeting: We command you, that without Delay you do full Right to E. of N. of one Messuage and two Shops with the Appurtenances in London, which he claims to hold of us by free Service, &c. whereof W. deforceth him, that we may hear no more Clamour thereupon for want of Right. Witness, &c. And it shall not be said in this Writ, And unless you will do this, the Sheriff of such a County shall do it, because the Writ is as well unto the Mayor of the said City as unto the Sheriff.*

And the *Writ of Right Patent*, which shall be directed unto another City or Borough, shall be of like Form as the Writ aforesaid is, as appeareth by the Register, thus :

The King to the Mayor and Bailiffs of Oxford, greeting: We command you, that without Delay you do full Right, &c. to E. of C. of twenty Shillings Rent, and Pasture for sixteen Cattle, with the Appurtenances in N. of which A. of B. unjustly deforceth him, &c.

D And because that the Lands and Tenements within Cities and Boroughs are *Burgage Tenement* holden of the King in *Burgage Tenure*, it behoveth that the *Writ of Right Patent* be directed unto the said Mayor and Sheriffs or Bailiffs, as Bailiffs and Officers of the King, as if Lands were holden of the King as of an Honour, *Note; All the Lands, &c. within the City* or Cattle, or Manor.

of London, and the Liberties thereof, are held in Free Burgage without any Mesnalty. *Privileg. Lond. 72.*

E And also upon a Writ of Right sued in London the Plea shall not be removed by (a) *Tolt*, or *Pone*, or *Recordare*, as another Writ of Right sued in the Court of another Lord shall be. But if the Tenant in the *Writ of Right in London* vouch a Foreigner to Warranty, the Demandant shall come into the (a) Chancery, and shall sue a *Summ' ad warrantizandum* in the Common Pleas before the Justices at a certain Day, and another Writ unto the (b) Mayor and Sheriffs, to send the Record before the said Justices at the same Day, &c. and then the Mayor and Sheriffs do adjourn the Parties before the Justices of the Common Pleas at a certain Day; and also at the same Day shall send the Record which is before them before the said Justices; and when the Justices have determined the Warranty, they shall (a) send back the Record by Writ, which shall issue out of the Rolls of the Justices, directed unto

(a) *N. B.* That at Common Law the Record was removed by a Writ out of Chancery, and after the Warranty determined, it was remanded back; *per Hankford. 14 H. 4. 26*

(b) See the Power of the Justices on such Removal of the Record. *44 Ed. 3. 2.* They may record an Aid Prayer for the Tenant, and remand the Record. *18 Ed. 3. 1.* They may grant a Resceit to the Wife on a Departure of the Husband, in Despight of the Court. *Contra 31 Ed. 3. F. Resceit 125.* But they cannot

give Judgment upon a Default. *Ibid. 41 Ed. 3. 31. 42 Ed. 3. 1.* Nor give Judgment upon a Confession; nor take an Issue between the Tenant and Vouchee; nor enter the Confession, &c. *18 Ed. 3. 1.*

A Vouchee cannot plead in Bar, but may vouch over a Foreigner; *per Kelf. contra Stouff;* and *49 Ed. 3. 31. per Wich. and Bale.* See *41 Ed. 3. 31. and 49 Ed. 3. 21.* They cannot try a new Issue pleaded by the Tenant to the Writ.

Writ of Right in London.

the Mayor and Sheriffs, commanding them to proceed in the Plea within the said City. And the same is by the Statute of *Gloucester, Of Foreign Voucher to Warranty, cap. 12.* And so it shall be done, if the Tenant plead a Foreign Plea, (a) the Plea shall be removed as aforesaid, and when the Matter (a) of the Plea is determined, then it shall be sent back unto the Mayor and Sheriffs as aforesaid, by the Equity of the said Statute.

And by the Rule in the Register every *Præcipe quod reddat* of Plea of Lands or Tenements in *London* shall be directed unto the Mayor and Sheriffs jointly: But every other Writ shall be directed unto the Sheriffs only.

V 18 E. 3. 8.
4 E. 6. 59.

And now it is a common Opinion, That if a Man hath Title to have a *Formedon* of Lands or Tenements in *London*, or any other Action Real, as a Writ of *Entry sur Disseisin*, or other Writ whatsoever of Lands or Tenements, he ought to sue this *Writ of Right Patent* (b) directed unto the Mayor and Sheriffs of *London*, that they shall do Right, &c. and that the Demandant, upon this Writ, shall make his Protestation to sue it in the Nature of what Writ he will, as a Man shall do upon a Writ of *Droit Close* sued in Antient Demesne. But it seemeth the Law shall not be so; for this Writ is a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs as other Writs directed unto another City or Borough are. And I have not heard that a Man shall make Protestation to sue such Writ Patent in the Nature of what Writ he will. But the City of *London* by their Custom have Power to hold Pleas of Lands within the City by other the King's Writs as well as by *Writ of Right Patent*, and that appeareth by the Register.

7 H. 6. 32.
ac. 37 H. 6.
27. But
Flow. 124.
Staunford,
contrary.

(c) And it appeareth, that *London* is not Antient Demesne; for then the Writ of Right, which shall be directed unto the Mayor and Sheriffs, should be Close, and not Patent. And it appeareth by the Register, in the Title of *Juris Utrum*, that a *Juris Utrum* was sued of Tenements in *London* returnable before the Justices of the Common Pleas.

And also it appeareth in the Register, in the Title of Writs of Waste, in the End of the Title, that a Writ of *Partic' facienda* was directed unto the Mayor and Sheriffs of *London*, to make Partition of Tenements in *London*; and also there followeth a Writ of *Estrepement*, sued and directed unto the

(a) *Id est*, In a Plea Real, but not in a Plea Personal; *per Frisby.* 3 H. 4. 12. But on a Foreign Plea pleaded in a Plea Real or Personal it shall be removed to be tried, and afterwards remanded, by the better Opinion. *Ibid.* And so it is on a Foreign Plea pleaded in a Court Baron, or Antient Demesne, or County Palatine. 14 H. 4. 25, 26. 22 H. 6. 48. *Lib. Intrat.* 229. But it is otherwise, if a Resummons be sued out of a Court which has Consuance on a Foreign Plea; *per Cur'.* 14 H. 4. 25. See *per Norton and Hull*, a Foreign Issue joined in Debt brought in Court Baron or other Court, which may hold Plea thereof, or in a Suit by Bill by a Copyholder; it shall not be tried here (in *Westmin-Hall*) *contra* of a Writ of Right brought in the Court of the Lord. 1 H. 5. 12. 27. 264.

(b) See a *Formedon* of Lands in *London.* 43 Ed. 3. 21. So a Writ of Right in the Hustings there, and Protestation made in Nature of a *Formedon.* 18 Ed. 3. 8. See also 3 H. 4. 12, 19. A Foreign Plea pleaded in a *Formedon* in *London* shall be removed to be tried (here) and after Trial remanded to be adjudged (there). 14 H. 4. 25.

N. B. 18 Ed. 3. 8. The Writ of Right was sued in Nature of a *Formedon in Descender* in *London.* See 4 *Instit.* 147. And no Writ lies of Lands in *London*, but in *London* only. *Dyer* 317.

(c) *Note*; In 7 H 6. 32. it is certified, that *London* is not Antient Demesne.

Sheriffs

Sheriffs of *London*, upon a Writ of (*a*) *Juris Utrum* depending before the Justices of the Common Pleas, of Tenements in *London*.

A And it appeareth in the Register a Writ of *Justicies* of Dower sued in *London* for Lands in *London* was directed unto the Mayor and Sheriffs of the City, and a special Writ for the Heir in Tail for Lands in *London* directed unto the Mayor and Sheriffs there, upon a (*b*) Devise made of the Lands unto his Ancestors in Tail, &c. And the like Writ for him in the Remainder in Tail, and also for him in the Reversion. And the like Writs upon Devises made in other Cities and Boroughs by some Persons to others, &c. And these Writs are in the Register after the Writ of *Formedon* in the Remainder. *Fol.* 244.

And by these Writs it appeareth, that a *Writ of Right Patent*, which is directed unto the Mayor and Sheriffs of *London*, is not such a Writ as a Man shall declare thereupon in the Nature of what Writ he will, &c. as it shall be upon a Writ of *Droit Close* sued in Antient Demefne; but that it behoveth to sue in *London* his Writ in the Nature of such Writ as his Case requireth, &c. But *quere veritatem* of that which was used in antient Times in *London*.

B And it appeareth in the Register, that the King shall have a Writ of Escheat *Escheat.* returnable into the King's Bench for Lands in *London* escheated unto the King; and by the same Reason another Man shall have a Writ of other Nature, there, returned in the Common Pleas. *Quere*; For the King hath a Prerogative in this Matter before others, to sue in what Court he will; but he cannot alter or change the Nature of the Writ, otherwise than the Law giveth the same to him; (*c*) and therefore *quere* of this Matter.

C There is also another Suit which lieth in a City or Borough for Lands or Tenements, by Usage and Custom of the City, and that is by Bill without any Writ out of the Chancery; and the same is called a Bill of *Fresh Force*, or an Assise of *Fresh Force*, and lieth only where a Man is disseised of his Lands and Tenements in any City or Borough, or deforced of any Lands or Tenements after the Death of his Ancestor, or after the Death of his Tenant for Life, or in Tail, or in Dower, or the like; now within forty Days after the Title accrued unto him, he may sue this Bill of *Fresh Force*, and shall make Protestation to sue in the Nature of what Writ he will, as Assise *de Mortdauncester*, or Assise of *Novel Disseisin*, or *Intrusion*, or of *Formedon*, or in the Nature of any other Writ, as his Case doth require: But after the

(a) See a *Juris Utrum* of Tenements in *London* challenged; for that their Franchise is, not to implead or be impleaded without their City Walls. *M.* 16 *Ed.* 3. .

(b) See the first Charter of *Ed.* 3. to *London*; the Citizens of *London* being Freemen, may devise their Lands there in Mortmain; and this seems to be an antient Custom there. See *Cro. Car.* 48 and 57. And by the Custom of *London* he who holds Lands there jointly with others, may devise that which belongs to him without any

other Severance. See 49 *Ed.* 3. *London*. And by the Custom there, all the Lands and Tenements, Rents and Services, within the said City and Suburbs are devisable. So that the Freemen and Women of the said City may by the said Usage devise them to whom and for what Estate they will. See *Caliborp's Cases* 103, 104. *W. B.*

(c) Here the Words *and others* are added to the Original.

Writ of Right of Dower.

forty Days past after the Title accrued unto him, he ought to sue a Writ out of the Chancery, directed to the Mayor and Sheriffs of *London*, as the Case lieth.

And also it appeareth by the antient Treatise of *Natura Brevium*, that if a D Foreigner sue an Assise, or other *Præcipe quod reddat* of Lands in *London* in the Common Pleas, &c. that the Mayor and Sheriffs, &c. (a) may demand Conufance, &c. And therefore it seemeth, if they do not demand Conufance of the Plea, but suffer the Recovery to pass in the Common Pleas before the Justices, that then the Recovery is good in the Common Pleas for the Lands in *London*. And when the Mayors and Bailiffs shall demand Conufance of Pleas, and when not, and when they have surceased their Times, appeareth in the Title *Conufance*, in the Abridgments, more at large; and therefore see there.

Writ of Right of Dower.

Tolt. ant. 3.
F. G.

Est. 4. B.

THE *Writ of Right of Dower* is Patent, and shall be directed unto the E Heir, to sue in the Court of the Heir, as it appeareth by *Britton*. And where the Writ is directed unto the Heir of the Husband, and the same Heir is seised of the Land whereof the Wife demandeth Dower, then if he will not assign Dower unto the Feme, the Feme who is Demandant may remove the same by a *Tolt* into the County, and also may remove the same out of the County into the Common Pleas by a *Pone*, &c. without shewing of any Cause in the Writ, as the Demandant shall do in a Writ of Right Patent. But the Tenant in a Writ of Right Patent shall not remove the Plea out of the County into the Common Pleas, without shewing of Cause in the *Pone*. And the Tenant in a Writ of Right Patent, or in a *Writ of Right of Dower*, may remove the Plea into the Common Pleas by a *Recordare* out of the Court of the Lord, upon Cause shewed in the Writ. And what Causes are sufficient and good to remove the Plea out of the Lord's Court, or out of the County, and what not, does appear in the Register; and therefore see the Causes there. But the Demandant cannot remove the Plea out of the Court of the Heir by a *Pone*, because he ought first to remove it by a *Tolt* into the County, and from the County he may remove it into the Common Pleas by a *Pone* without shewing of Cause in the Writ, as before is said.

And in a Writ of Right Patent the Plea may be removed at the Tenant's Suit by a *Recordare* out of the Lord's Court into the Common Pleas, before the Justices there: And by the same Reason it seemeth, that it may be removed at the Suit of the Tenant, in a *Writ of Right of Dower*, out of the Heir's Court into the Common Pleas, before the Justices there, by *Recordare*, for good Cause. But *quere*.

(a) See *per Pult.* That they have not Conufance in Pleas (or Suits) Real, but only in Pleas Personal, *M.* 16 *Ed.* 3.

And

F And if the Husband do enfeoff a Stranger of all his Lands, and dieth, and his Heir hath nothing by Descent; now if the Feme be to sue forth a *Writ of Right of Dower*, it seemeth she shall sue her *Writ of Right of Dower* directed unto the same Feoffee, &c. for after the Endowment the Feoffee shall be her Lord, and she shall hold this Dower of him by Fealty. But before the Statute *de quia Emptores terrarum*, if the Husband enfeoff a Stranger of Parcel of his Lands, &c. to hold of him, then if the Feme be to sue a *Writ of Right of Dower* against the Feoffee, the Writ shall be sued in the Heir's Court, and the Writ shall be directed unto the Heir, for the Seignory that remaineth in him.

[3.]

A And so if the Husband at this Day giveth Parcel of his Manor in Tail to hold of him, and dieth, the Feme shall sue her *Writ of Right of Dower* in the Court of the Heir of her Husband against the Donee in Tail, and the Writ shall be directed unto the Heir: But if the Husband make a Gift in Tail of all the Lands that he hath, and dieth, and the Feme is to sue a *Writ of Right of Dower* of that Land; then the Husband's Heir cannot have any Court, because he hath but a Seignory in Gros; and therefore it stands with Reason that she should have her *Writ of Right of Dower* against the Donee in Tail directed unto the Sheriff, returnable in the Common Pleas, and she shall have this Clause in the Writ; *Because B. the chief Lord of the Fee, hath thereupon remitted to us his Court.*

B And so if the Husband make a Lease of all his Lands unto a Stranger for Life, and dieth, and the Feme is to bring a *Writ of Right of Dower* against the Lessee for Life; then it seemeth reasonable that the Feme have her *Writ of Right of Dower* against the Lessee for Life in the Common Pleas, because that he in the Reversion hath not any Court. And although that this Clause, *viz. Because B. the chief Lord, &c.* be put in the Writ, if the Lord have not any Court to hold, because it is a Seignory in Gros, and not any Demesne Land to hold a Court, &c. then, although the Lord did never remit his Court, and that there is not any Matter apparent or remaining in the Chancery to prove the Lord's Will and Assent to remit his Court, yet the Writ returned into the Common Pleas before the Justices there, is good; and they shall proceed thereupon, if the Lord hath not any Court to hold Plea for this Matter. And it seemeth that the Lord shall not have his Action against the Demandant for suing the Writ in the Common Pleas, if he have no Court to hold Plea thereupon, and to do Right unto the Party. But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Justices of the Common Pleas, that they do not proceed upon the Plea, otherwise not. *Quare* of this Matter.



C And this *Writ of Right of Dower* lieth where a Feme is endowed of Parcel of her Dower; and she would demand the Residue against the same Tenant, and in the same Town, then she ought to shew this *Writ of Right of Dower*; for the Words of the other Writ will not serve, *viz. unde nihil habet*, because that she hath received Part of her Dower; and therefore of Necessity it becometh her to sue this *Writ of Right of Dower* to recover the Residue; and the Writ shall be directed unto the Heir, or unto his Guardian, if he be in Ward, as a Writ of Right Patent shall be, &c.

Writ of Right of Dower.

And if a Feme lose her Land which she holdeth in Dower by Default in a **D** *Præcipe quod reddat*; yet according to (a) the Opinion of some Men, she shall have a *Writ of Right of Dower*. But it seemeth, by the Equity of the Statute of *West. 2. cap. 4.* that if a Feme lose by Default the Land whereof she hath had Dower, that by that Statute she shall have a *Quod ei deforceat* to recover the Land; and before that Statute she had no Remedy for to recover the Land, but only an Action of *Disceit*, if she were not summoned in this *Writ of Right of Dower*.

And if a Feme hath a Dower, and lose the same by Assise or Action tried, **E** it seemeth she hath not any Remedy but only by Attaint; for it seemeth that she shall not have Remedy to recover by a *Writ of Right of Dower*, because she had the Land once assigned unto her in Dower, and she was in Possession of the same, so that the Title was executed, and she ought to sue an Action of her own Possession, if she be afterwards deforced. *Tamen quære*. And **F** after the Plea removed unto the Common Pleas, the Process is then *Grand Cape* and *Petit Cape*. And in the Heir's Court the Manner is to make a Precept in the Nature of Summons, and of *Grand Cape* and *Petit Cape*, and the Writ directed unto the Heir is such:

The King to A. greeting: We command you, that without Delay you do full **G**
Right to B. who was the Wife of C. of a third Part of ten Acres of Land with
the Appurtenances in W. which she claims to hold of you in Dower by the free
Service of a third Part of one Penny per Annum for all Service, whereof C. un-
justly deforceth her, &c.

And also a Feme may have a *Writ of Right of Dower* of the Moiety, ac- **H**
cording to the Usage of *Gavelkind*, where she hath received Part, and is de-
forced of Part. And it also appeareth by the Register, that the Feme shall **I**
have a *Writ of Right of Dower* directed unto the Heir himself, where he him-
self deforceth her of the Profits of an Office; and the Writ is such:

The King to A. greeting: We command you, that you do full Right to A. and R. **K**
bis Wife, of the third Part (b) of the Issues arising from the Keeping of the Gaol
of Westminster-Abby, and of the third Part of three Roods of Land, one Rood
of Meadow, and of the Rent of so many Leaves, and of so many Flaggons or of
so many Firkins of Ale by the Day, or by the Week, or by the Year, with the Ap-
purtenances in the City of Westminster, which they claim to belong to their free
Tenement, which they hold of you for the Dower of the said R. in the said City,
and to hold of you by the free Service of finding for you one third Part of a Keeper
for the Keeping of the Gaol aforesaid, and of the Gate of the said Abby, for all
Service, whereof you yourself unjustly deforce them, &c.

(a) See accordant herewith *Jon. Rep.* 381.
1 Cro. 445. And in such Case the Writ men-
tions their Estates. *W. B.*

(b) See *15 Ed. 3. F. Dower* 81. Dower de-
manded of the Profits arising from a Fair. See
11 Ed. 3. F. Dower 85. Dower demanded of
the Moiety of a Stallage arising from a Fair, and
held good, without saying a Moiety of the Pro-
fits of the Stallage; for the Stallage is the Profits.
See the *Book of Entries* 234. *Of the third Part*
of the Issues and Profits of a certain Market every
Tuesday, and of a Fair every Year on the Feast

of, &c. *12 Ed. 3. F. Dower* 90. A Demand
of the third Part of the Profits of the Office of a
Bailliff, Parker, &c. without demanding a third
Part of the Office itself; which cannot be, be-
cause the Office is intire. *Quære* of the Office
of Tentury, *ibid.* See *45 Ed. 3. F. Dower* 50.
where a Feme was endowed of the third Part of
the Profits of a Mill, and had (thereby) the
Freehold of the third Part of the Mill vested in
her. See *21 Ed. 3.* 57. Dower of the third
Part of the Office of the Marshallsea.

And

A And by this it appeareth, that a Feme shall have a *Writ of Right of Dower* [9.] of that Thing which is appendant or appurtenant unto the Land which she holdeth in Dower, &c. if she be deforced thereof. Vide infra l. accord'.

Writ of Right de rationabili Parte.

B **A** Writ of Right *de rationabili Parte* always lieth betwixt Privies in Blood, as betwixt Brothers in *Gavelkind*, or betwixt Sisters and other Coparceners, as Nephews and Nieces, and lieth for Lands in Fee-simple: As if the Ancestor lease his Lands for Term of Life, and dieth, and hath Issue two Daughters, and afterwards the Tenant for Life dieth, and one Daughter entreteth into the whole Land, and deforceth her Sister of the Land; her Sister shall have this Writ of Right *de rationabili Parte*: And so if the Ancestor was disseised of Lands, and dieth, and one Sister entreteth into the Land, and deforceth her Sister thereof; the Sister who is deforced shall have this Writ against her other Sister. And so two or three may sue this Writ against the fourth Sister, or the Aunt, and the Niece may sue this Writ against that Sister which deforceth her of her Part, &c. And this Writ lieth as well upon a dying seised of the Ancestor, if one Sister enter upon all, and deforce the other Sisters, as where the Ancestor doth not die seised: And the Writ is a *Writ of Right Patent*, and shall be directed to the Lord of whom the Lands are holden, as other *Writs of Right Patent* shall be, and shall be removed by *Tolt* and other Writs, as the Common *Writ of Right* shall be. But Grand Assise, nor Battail, shall not be joined in this Writ, for the Privy of the Blood that is betwixt them. Neither shall this Writ be sued against a Stranger, and if it be it shall abate. And if the Ancestor die seised, and one Sister entreteth into all the Land, and deforceth her Sisters, the others may sue this Writ of Right *de rationabili Parte*, or a Writ of *Nuper obiit*, at their Election. And so it is for Lands in *Gavelkind*; if one Brother entreteth into all the Lands, and deforceth his Brethren, they may sue this Writ of Right *de rationabili Parte*, or a *Nuper obiit*, if the Ancestor die seised: But if the Ancestor doth not die seised, then they ought to sue this Writ *de recto rationabili Parte*. But against a Stranger it behoveth to sue *Assise de Mortdauncester* upon the Death of their Ancestor, or other Writ (as their Case shall require) of the Seisin of their Ancestor. And the Form of the Writ of Right *de rationabili Parte* is such:

Nat. Brev. 119. Post. 197.

Nat. Brev. 119.

H *The King to A. B. greeting: We command you, that without Delay you do full Right to W. F. of ten Acres of Land with the Appurtenances in B. which she claims to be her reasonable Part, which belongs to her of the free Tenement which was J.'s, her Father's or Mother's, Uncle's or Aunt's, or Cousin's, in the same Vill, and to hold of you by the free Service of the third Part or the fourth Part of one Penny per Annum for all Service, whereof B. and S. unjustly deforce her.*

And by the Register, in this Writ, a Man may see what Rent and Services all the Land which is partible betwixt the Sisters shall yield and pay unto the chief Lord, and accordingly put every one of the Heirs to her Part. So if there be one Demandant and two Deforceants, then thus; *Which she claims to*

Writ of Right de rationabili Parte.

hold of you by the free Service of the third Part of so much per Annum. And if there be two Demandants and two Deforceants, then thus: *Which she claims to hold of you by the free Service of a Moiety; or, of two Parts of so much per Annum for all Service.* And if the Land be holden by 4d. per Annum and Fealty, and there are two Demandants and two Deforceants, then the Writ may be: *Which she claims to hold of you by the free Service of two Pence per Annum for all Service, &c.*

And if there be two Sisters, and after the Death of the Ancestor they enter I and occupy in common as Coparceners, and one of them deforce the other * V. sup. A. Sifter to occupy that which is * appendant or appurtenant to the Tenement accord'. which they have in Coparcenary; then she who is deforced shall have a Writ of Right *de rationabili Parte* against her Sister, of that which is so appendant or appurtenant, and the Writ for that shall be such: *Which she claims to belong to her Freehold which she holds of you in the same Vill, and ought to hold of you by the free Service of so much for all Service, which W. &c.* And in this Writ K he shall make his Demand of a certain Portion of Land, as to so much as his Plea doth amount unto, to hold in Severalty; as if the Ancestor die seised of twenty Acres, and hath two Daughters, and one entreth into the Whole, and deforceth her Sister; the other Sister shall demand by her Writ ten Acres of the twenty Acres, because that such is her Part; and by this Writ if she re- L cover, she shall have Judgment to recover ten Acres, to hold in Severalty, as her Part doth amount unto (a).

Judgment.

And this Writ of Right *de rationabili Parte* ought to be brought against all M the Coparceners that hold the Land, &c. and by all those that are deforced of the Land, as it appeareth by *Britton*: And Voucher and View do not lie in N this Writ, because of the Privy of Blood; but in a *rationabili Parte* the View was granted *H. 15 H. 5.* because that the Ancestor did not die seised, &c. And Non-tenure is no Plea in this Writ by *Britton*, &c. And the Pro- O cess in this Writ, after it is removed into the Common Pleas, is *Summons, Grand Cape and Petit Cape*; and in the Lord's Court the Manner is to make Process in the Nature of *Grand Cape and Petit Cape, &c.*

And the Heir of one Coparcener may sue this Writ of Right *de rationabili P Parte* of the Seisin of the common Ancestor, which was of the Seisin of his [10.] Ancestor in the Time of King *R. 1.* or *H. 3.* or of the Seisin in the Time of King *John*, or other Kings after that Time, if he can prove it. As a Man shall have a Writ of Right Patent of the (b) Seisin of his Ancestors in such A Times, &c. But if one Coparcener claim the Land by a Feoffment made unto her by her Ancestor in Fee; now if the other Coparcener deforce her of the Lands, she may have a Writ of Right Patent against her Sister for the

Com. 306.
no Pattaill lieth
betwixt them.

(a) Vid. accordant 12 Ed. 3. Judgment 162. 7 Aff. 10. 7 Ed. 3. 49, &c. cited in the Margin of *Co. Lit.* 167. b. That if two Coparceners be, and one disseise the other, and the Disseisee recovers in Assise, &c. she shall have Judgment to hold her Moiety in Severalty; so if one Coparcener recovers against the other in a *Nuper obiit*, or *rationabili Parte*, the Judgment shall be, that

the Demandant shall recover and hold in Severalty. 3 Ed. 3. 48. 4 H. 7. 10. 30 Ed. 1. *Nuper obiit* 18. 21 R. 2. *Nuper obiit* 22.

(b) And in that Case if the Demandant be within Age, the Pajol shall demur; contra, if there be no Mesne Descent of the Right. 7 H. 4. 20.

Land, and shall join the Mife by Grand Affife, or by Battail, becaufe ſhe doth not there claim the Land as Heir to her Anceftor, as it ſeemeth: *Tamen quære.*

B And if a Man hath Iſſue two Daughters, and dieth ſeiſed of Lands in Tail, and one Daughter entreth into the Whole, and deſorceth her Siſter; there the Siſter may have a *Formedon* againſt the other Siſter, and not a *Nuper obiit*, nor this Writ of Right *de rationabili Parte*; for this Writ lieth properly for the Lands in Fee-ſimple.

Writ of Ne injuste vexes.

Vide Mag.
Char. cap 10.

C WRIT of *Ne injuste vexes* lieth in Caſe where Lord and Tenant are, and the Tenant hath holden of the Lord and his Anceftors by Fealty and twenty Shillings Rent yearly, and of late Time the Lord hath gotten (a) Seiſin of greater and more Rent of the Tenant, by Payment of the Tenant of his own Agreement without Coertion of Diſtreſs: Now if the Lord will diſtrain the Tenant for this Surpluſage of Rent, the Tenant cannot avoid the Lord in an Avowry, for the Seiſin which the Lord hath had by the Payment of the Tenant of this Rent of his own Agreement. But the Tenant

C. 4. Part 17.
Bewil's Caſe,
infra G.

D may ſue this Writ of *Ne injuste vexes* directed unto the Lord; which Writ is in itſelf a Prohibition unto the Lord, that he do not diſtrain his Tenant to do other Services than of Right he ought to do. And this Writ in its Nature is a Writ of Right, and ſhall be Patent; and this Clause, *And unleſs you will do this, the Sheriff, &c.* ſhall be put into the Writ. And the Proceſs in this Writ is, *Prohibition, Attachment and Diſtreſs* againſt the Lord, commanding E him that he ſhall not diſtrain, &c. And this Writ is founded upon the Statute of *Magna Charta, cap. 10.* which willeth, *That no Man be diſtrained to do greater Service for a Knight's Fee, nor for any other Freehold, than is therefore due.* And the Form of the Writ is ſuch:

F (b) *The King to A. greeting: We command you, that you unjuſtly vex not, or permit to be vexed, B. concerning his free Tenement which he holds of you in J. nor therefore require or permit to be required of him Customs or Services which he oweth not, nor is uſed to do for the ſame; and unleſs you will do this, the Sheriff of Lincoln ſhall cauſe the ſame to be done, that we may hear no more Clamour thereupon for want of Right.*

And this Writ is always Anceftrel, viz. where the Tenant and his Anceftors have holden of the Lord and his Anceftors by Fealty and twenty Shillings Rent, or other Rent and Service; and of later Time the Lord hath incroached divers others Services or Rents, by Payment of the Tenant, or

(a) But if the Lord recover more on an Action tried, the Tenant ſhall not have a *Ne injuste vexes*; per *Knivet: Quære. 39 Ed. 3. 18.* and ſee accordant 38 *Ed. 3. F. Droit 32.* And by *Green*, the Tenant ſhall have a *Ne injuste vexes*, although the Lord recovers the Rent by Affiſe,

which he had releaſed, but the Deed thereof not produced in Evidence; or where the Affiſe was taken on the Seiſin and Diſſeiſin. 7 *H. 5. 7. a.*

(b) This Writ lies not againſt the Lord where a Recovery in an Action is had by him. 38 *Ed. 3. F. Droit 32.*

doing

But otherwise in Assise of Rent, or in a Writ of Restitucio or Cessavit; for the Tenure is traversable in these Writs. 12 Ed. 4. 7. 22 Ass. 68. Thorpe. V. 26 H. 8. 6. 7 Ed. 4. 28. 16 Ed. 4. 11. 20 Ed. 4. 17. 10 H. 7. 11. 26 H. 8. 6. Com. 45. & 94.

doing of other Services which he ought not to do unto the Lord; then the Tenant may sue this Writ: For by Ineroachment of Rent by the Lord by Payment of the Tenant, the Tenant shall not avoid the same in an *Avowry* by the Lord for that Rent which is so ineroached. But if the Lord do ineroach other Services which the Tenant of Right ought not to do unto him, as Homage or Escuage; then the Tenant may avoid this Ineroachment in *Avowry* by the Lord for these Services, because the Tenant may traverse the Manner of the Tenure in that Case; as to say, that he holdeth of the Lord by Fealty and twenty Shillings Rent only, without that he holdeth by Homage, Fealty and Rent, in the Manner and Form as the *Avowry* is made: Or the Tenant may sue this Writ of *Ne injuste vexes* in that Case if he will. And if the Lord do distrain to do other Services after the Prohibition delivered unto him, or to pay more Rent than of Right he ought to pay, then the Tenant shall have an Attachment against the Lord returnable in the Common Pleas, or in the King's Bench. And when the Lord cometh upon the Attachment, then the Tenant shall count against him in this Manner.

The Count.

B. sheweth unto you, That whereas he holdeth of the aforesaid *A.* &c. as of his Manor of *C.* twenty Acres of Land with the Appurtenances in *W.* by Homage, Fealty, and by the Service of the twentieth Part of a Knight's Fee, and by the Services to render to the said *A.* Half a Pound of Pepper yearly at the Feast of *All-Saints*, for all Manner of Services; yet the aforesaid *A.* over the Services aforesaid, vexeth the said *B.* and suffereth him to be vexed, and of him demandeth and distraineth, and suffereth him to be distrained for nine Shillings *per Annum* of Rent, for which he is damnified unto his Damage of twenty Pounds. And so note, that he shall declare of Damages in this Writ; and then upon this Count, the Lord who is Defendant shall make his Defence, and shall defend the Wrong and Force, &c. and shall count against the Plaintiff, and shall say, that he doth not tortiously demand the said Rent of nine Shillings over the other Services, &c. for he shall say, that the said *B.* holdeth the said twenty Acres of Land, &c. of him by the said Rent and Services, &c. and that he the said *A.* was seised as well of the said Rents of nine Shillings, as of all the other Services aforesaid, by the Hands of the aforesaid *B.* as by the Hand of his very Tenant for the said twenty Acres of Lands with the Appurtenances, as of Fee and of Right in Time of Peace, *viz.* in the Time of King *Edward*, late King of *England*, &c. in taking of the Esplees, *viz.* Rents, &c. And that such is his Right, he is ready to make good by his Body, &c.

The Defendant Actor.

[11.]

And thereupon he who is Plaintiff in the *Ne injuste vexes* shall defend this Count, and thereof shall put himself upon the Grand Assise, and so the Mise shall be joined betwixt them in this Writ, which is at first but a Prohibition, &c. And Judgment final shall be given upon this Writ after the Mise joined, if it pass against any of the Parties; or if any of them be Nonsuit, or make Default after the Mise joined. And see the Form of the Count and of the Defence in this Writ, in the Book of *Entries of Pleas*, f. 90, on the first Page.

And

- C And it appeareth *M. 18 Ed. 2.* that the (a) Feoffee shall not avoid Seisin of Rent had by Inroachment of his Feoffor, nor shall he have a Writ of *Ne injuste vexes*; nor a Man shall not have a Writ of *Ne injuste vexes* against the Grantee of the Seignior, as appeareth *p. 10 E. 3.* 14 H. 4. 5 ac. by Thirning, and after 163. See 12 H. 4. cont. per Hankf.
- D And *Trin. 20 Ed. 3.* it appeareth that Tenant in Tail shall not have *Ne injuste vexes*, &c. but he shall plead *, and shew the Matter, and shall not be estopped by the Payment and Seisin had by the Hands of his Ancestors; but by a Seisin had by his own Hands he shall be bound during his Time in Avowry, as it seemeth. But after the Mife joined in a Writ of *Ne injuste vexes* sued, if the Parties imparl until another Term and Day, and after at this Term at the Day the Lord, who is the Defendant in the *Ne injuste vexes*, make Default, now what Procefs shall be awarded thereupon, or if Judgment shall be given upon this Default without any Procefs, *quare*. And so if the Plaintiff at another Term after the Mife joined, and Day given, &c. make Default, it seemeth he shall be Nonsuit, &c. See *fol. 5. D.* * See 20 Ed. 3. F. Avowry 131.

Writ de Recto Clauso.

See 4 Inſ.
269, 270.

- F WRIT of *Droit Cloſe* is a Writ which is directed unto the Lord of Ancient Demefne, which lieth for thoſe Tenants within Ancient Demefne, who held their Lands and Tenements by Charter in Fee-simple, or in Fee-tail, or for Life, or in Dower; if any of them be ouſted of his Lands or Tenements, or diſſeiſed, &c. he or his Heir may ſue this Writ of *Droit Cloſe* directed unto the Lord of Ancient Demefne, commanding him to do Right, &c. in his Court; and the Form of the Writ is ſuch:
- G Henry by the Grace, &c. (b) to his Bailiffs of J. greeting: *We command you, that without Delay, and according to the Cuſtom of our Manor of J. you do full Right to A. of one Meſſuage with the Appurtenances in J. whereof B. unjuſtly deſorceth him, that we may hear no more Clamour thereupon for want of Right. Witneſs, &c.* And another Writ thus:
- The King to his Bailiffs of the Caſtle of Bamburg, greeting: *We command, &c. that, &c. according to the Cuſtom of the Manor of the Caſtle of Bamburg, you do full Right of two Parts of the Fiſbery of the Water of J. in Bamburg, whereof B. deſorceth him, &c.* And the Order of putting the Parcels of Houſes, Lands, Meadows and Paſture, &c. ſhall be obſerved and uſed, as
- I ſhall be done in a Writ of Right Patent. And this Writ may be ſued of Common of Paſture, and for ſtopping of a Way, and ſuch like. And the Writ for the Common is ſuch:

(a) See accordant 33 *Ed. 3.* F. Avowry 255. or rather 225. And therefore on Special Matter ſhewn he may traſerve, That he takes by the Feoffment, and the Tenant by whoſe Hands the Seisin was, ſhall not avoid this on the Avowry. 18 *Ed. 3.* F. Avowry 217.

(b) Note; Though the Writ is directed to the Bailiffs, yet the Suitors are the Judges.

Mich. 17, 18 Eliz. Rot. 1381. See *Benl. N. 254.*

Note alſo; Although the Precept be *quod venire faciat 12, &c.* yet on the Proteſtation to ſue in Form (or Nature) of an Aſſiſe, the Return of 12 is good, and ſo it ſeems of 24. *Hill. 19 Eliz. 3. Hayter's Caſe, & 44, Aubrahal's Caſe.*

Writ de Recto Clauso.

The King, &c. We command you that you do full Right, &c. of Common of K Pasture in T. which belongeth to one Messuage and ten Acres of Land, which he holds in the same Vill according to the Custom of the Manor aforesaid, whereof B. C. and D. unjustly desorce him. And for stopping of a Way the Writ is such:

The King to the Bailiffs of the Bishop of Litchfield and Coventry of the Manor of C. greeting: R. hath complained to us, that W. unjustly and without Judgment hath obstructed a certain Way in D. which is within the Precinct of the same Manor, to the Nuisance of one Messuage which the said R. holds according to the Custom of the Manor aforesaid in the same Vill: And therefore we command you, that having called before you the Parties aforesaid, and having heard their Reasons, from hence thereupon you (a) cause to be done to the said R. due and speedy Fullness of Justice in the Premisses, as hath been used to be done according to the Custom of the Manor aforesaid.

And note, that the Demesne Lands of a Manor, and the Manor itself, which M is called Ancient Demesne, is pleadable at the Common Law; as a Man ought to sue his Action for the Manor, and for the Lands, which are Parcel of the Manor, at the Common Law and in the Common Pleas. But if a Man will sue for the Lands which are holden of the Manor, which are in the Hands of a (b) free Tenant who holdeth of the Manor, for these Lands he ought to sue this Writ of *Droit Close*, directed unto the Lord of the Manor, and there he shall make his Protestation to sue in that Court the same Writ, in the Nature of what Writ he will declare. And the Form of Entry when such Writ is brought in Court, is such:

At this Court cometh R. N. by Nicholas B. his Attorney (by the Letters Patent N of the said R.) and hath delivered to the aforesaid Bailiffs a certain Close Writ of the Lord the now King, directed to the same Bailiffs, to be executed in Form of Law according to the Custom of the Manor aforesaid, the Tenor whereof followeth in these Words:

[12.] *Henry, &c. to the Bailiffs of J. of S. greeting: We command you, that justly and without Delay, and according to the Custom of the Manor of G. of S. you do full Right to Robert N. of two Messuages, &c. in W. and H. of which P. and C. unjustly desorce him, that we may hear no more Clamour thereupon for want of Right, &c. And upon this the aforesaid Robert N. finds Pledges of prosecuting his Writ aforesaid, to wit, T. and W. and protesteth to prosecute that Writ in the same Court in Form and Nature of a Writ of Assise of Novel Disseisin at the Common Law, according to the Custom of the Manor aforesaid, saying, That the aforesaid P. and C. unjustly and without Judgment have disseised him of his free Tenement in W. and H. to wit, of the Tenements aforesaid with the Appurtenances, after the first, &c. And he thereupon prayeth Process to be made according to the aforesaid Custom of the same Manor, &c. Therefore according to the Custom of the same Manor T. H. the Under-Bailiff of the Manor and Minister of this Court, is commanded, that he cause those Tenements to be rescised of the Chattels which were taken therein, and the same Tenements with the Appurtenances to be in Peace*

(a) But Note; Some Actions which are suable there (i. e. in the Manor Court) only, are suable by way of Plaint, as Replevin, Account against a Guardian in Socage; and so it seems of a Writ of *Mejne*. See 21 Ed. 3. 10.

(b) And Note; Lands that are Frank-fee may be held of a Manor that is Ancient Demesne. See 11 H. 4. 86. per Cur. Yet if Frank-fee be recovered in a Court of Ancient Demesne, it is a Disseisin. 30 Ed. 3. Aff. 3. 4 H. 6. 79

until at the next Court to be held before the aforesaid Bailiffs and Suitors of the same Court, to wit, on Thursday next coming, here, to wit, at S. and in the mean time that he cause twelve free and lawful Men of the Neighbourhood of W. and H. aforesaid, within the Precinct of the Manor aforesaid, to view the Tenements aforesaid, and to cause their Names to be put in the Writ, and that he summon them by good Summoners, that they be then here, to wit, at S. ready to make Cognizance thereupon; and that he put by Gages and safe Pledges, the aforesaid P. T. his Bailiff, if he shall not be found that he be then here at S. to hear that Cognizance, &c. And that he then have there the Names of the Pledges, the Summoners, and the said Precept to him thereupon directed. And the same Day is given to the aforesaid R. N. &c.

See all this Form to make Protestation in the Book of Entries of Pleas, Fol. 115. And then at the Day of the Precept and Process returned, the Defendant ought to appear and plead in Bar, or unto the Writ, or other Matter, in such Form as shall be in an Assise at the Common Law. And if the Protestation be made in the Nature of another Writ, then the Precept shall be according unto the Nature of the Process which is given in such Writ; and the Tenant when he cometh in shall plead as he shall do in such Writ sued against him at the Common Law, for the Nature of the Protestation doth alter and change the Manner of Pleading for the Tenant.

A And if false Judgment be given in this Writ, the Party Tenant or Deman- Post. 18.
dant may sue a Writ of false Judgment thereupon.

B But he who holdeth Land in Ancient Demesne by Copy of Court-Roll, at the Will of the Lord, who is called Tenant by base Tenure, if he be ousted of his Lands or Tenements there in Ancient Demesne, he shall not have this Writ of *Droit Close*, but he ought to (a) sue by Bill in the Court of the Lord of the Manor, and shall make Protestation to sue there in the Nature of what Writ he will. But if false Judgment be given against him in that Court, he shall not have a Writ of false Judgment thereupon at the Common Law, nor Lit. 6. acc. 14 H. 4. 34. 7 Ed. 4. 19.
other Remedy; but to sue unto the Lord by way of Petition, as it appeareth in 14 H. 4. For those who hold their Lands in base Tenure in Ancient Demesne, or by the Rod, hold them in Villenage, and they shall not have such Writ of *Droit Close*, nor a Writ of (b) false Judgment, &c. See the Statute of 1 R. 2. cap. 6. of that Matter.

C And this Term, which is now at this Day called Copy-tenants, or Copy- Note, Copy-
hold Tenants.
holders, or Tenants by Copy, is but a new found Term, for of ancient Times they were called Tenants in Villenage, or of base Tenure; and that appeareth by the ancient Tenures, that those who held by the Rod, or in base Tenure, or by Copy of Court-Roll, were then called and named Tenants that held in the Villenage: For Tenants by Copy of Court-Roll are not spe-

(a) See 14 H. 4. 34. 1 H. 5. 12. *Nat. Brev.* 16.

(b) And *Note*; 14 H. 4. 34. it was adjudged, That if one recover against Tenant by the Verge in Ancient Demesne by Writ of Right Close, the Tenant shall not have a Writ of false Judgment,

nor assign this for Error; for then he should be restored to a Freehold which he never lost, but always continued in the Lord. But it seems the Recovery is void, and may be avoided by Plea. 1 H. 5. 12. And so it is, tho' they are Lands at Common Law. 13 H. 6. 28.

cified, nor named by such Name; but yet at that Time there were such Tenants, but then they were called Tenants in Villenage, or of base Tenure.

And when the Writ of *Droit Close* cometh unto the Lord, or unto his Bailiff, the Lord ought for to hold his Court, and to proceed thereupon according to Law, &c. And if the Lord will not hold his Court, then the Demandant may sue a Writ out of the Chancery directed unto the Lord, commanding him to hold his Court, &c. And if he will not hold it, then the Demandant may sue an Attachment against the Lord directed unto the Sheriff, returnable in the Common Pleas or King's Bench, and thereupon the Demandant shall recover his Damages.

And if the Writ of *Droit Close* be directed unto the Bailiffs, &c. and they will not hold the Court, then he may sue such a Writ unto the Bailiffs, commanding them to hold their Court; and if they will not so do, he may sue an Attachment against them directed unto the Sheriff, returnable as afore-said, &c.

(a) And if the Lord himself oust his Tenant of Lands which are holden of the Manor by Charter in Fee, the Tenant who is ousted shall have this Writ of *Droit Close* directed unto the Lord himself, if he will, &c. Or in this Case he may have an Assise, or other Writ at the Common Law against the Lord of those Lands. But it appeareth by a Rule in the Register, that if the Demandant be defeated of Justice in the Lord's Court, that then the Demandant may sue a Writ directed unto the Sheriff, commanding the Sheriff that he go unto the Court in Ancient Demesne, and that he take with him four discreet Knights in their proper Persons, to see that Right be done unto the Party demandant in this Writ; and if the Sheriff refuse so to do, he may have an *Alias* and *Pluries*, and Attachment against the Sheriff in the Common Pleas or King's Bench. But it seemeth, that this Writ which shall be so sued directed unto the Sheriff, that he see Right done to the Demandant, is of little Effect; for by Virtue of this Writ he cannot compel the Lord to do Right unto the Demandant, as it seemeth; *tamen quere*: For if he cannot cause the Lord to do Right unto the Demandant in a Writ of *Droit Close*, then it shall be in vain to sue such Writ directed unto the Sheriff, to go unto the Lord's Court, and to see that Right be there done. And the Demandant may sue such Writ directed unto the Bailiffs, or unto the Lord himself, commanding them that they do him Right, &c. and that they do not delay the Matter, &c. And thereupon an *Alias*, a *Pluries*, and *Attachment*, if need be.

(a) See 21 Ed. 3. 26. Assise brought by the Tenant against the Lord and another, and the other takes on him the Tenancy, and the Lord would have pleaded Ancient Demesne, and because he was named only as a Disseisor, he could not. See 41 Ed. 3. 22. A *Præcipe* brought by a Tenant against the Lord in Ancient Demesne,

and two others, and the Lord disclaims, &c. And see there, there is the same Election of the Tenant, where he brings his Action, or the Lord disseises him.

Quere, If the Tenant recovers against the Lord at Common Law, if ever the Lands can be Ancient Demesne again.

A And if a Plea be removed in the County, the Demandant may sue such Writ directed unto the Sheriff, that he proceed in the Plea, unto Judgment, and to do Right; and upon that he shall have an *Alias*, a *Pluries*, and *Attachment*, against the Sheriff, if he will not do accordingly.

B And note, That the Demandant in a Writ of *Droit Close* cannot (a) remove the Plea out of the Lord's Court for no Cause, &c. nor the Tenant remove the Plea out of the Ancient Demesne, if not for Causes which prove the Land to be Frank-fee, and not Ancient Demesne; and the Form of the Writ of *Recordare* to remove the Plea out of Ancient Demesne is such:

C (b) *The King to the Sheriff of Lincolnshire, greeting: We command you, that having taken with you four discreet and lawful Knights of your County, you go in your proper Person to the Court B. of C. and in the full Court you cause to be recorded the Plea, which is in the same Court by our little Writ of Right, between, &c. of one Messuage with the Appurtenances in J. and have you that Record before our Justices, &c. and to the Parties, &c. And have you there the Names of the aforesaid four Men, and this Writ and the other Writ, &c. Because the aforesaid A. in pleading in the Court aforesaid, hath produced the Charter of Lord Henry formerly King of England, our Progenitor and Great Grandfather, by which our said Great Grandfather enfeoffed W. the Father of the aforesaid*

34 H. 6. 35.
6 H. 4. 1.
50 Ed. 3. 24.
1 H. 7. 30.

(a) See accordant, *per Cur'*, 34 H. 6. 35. *Sed contra*, 2 Ed. 3. 29. But *ibid.* 35, seems to agree. See also 3 H. 4. 14. Where he is but Bailiff, he may maintain the Plea, or if he be Party, the Parol shall be remanded; yet if the Bailiff be Cousin and Heir to the Plaintiff, it is good Cause of Removal; yet see 6 H. 4. 1. That he was Bailiff of the Robes to the Plaintiff was held no Cause of Removal, *per Cur'*; and therefore remanded; and if the Court does not do Right, he is put to his Writ of false Judgment. 12 H. 4. 17. 13 H. 4. 14. Nor is it Cause of Removal, that the Process there was misawarded. 9 H. 6. 25. Nor when the Bailiff is Demandant. 11 H. 6. 10. *Per Cur'*.

(b) Note; On a *Recordare* from a Court of Ancient Demesne, if the Record be made up and removed, but the Cause of Removal appears to the Court to be insufficient, the Tenant shall not be effoined, 34 H. 6. 35. *per Cur'*; but if the Cause be sufficient, the Tenant may be effoined. 14 Ed. 3. *Effoin* 10. 19 Ed. 3. *Effoin* 23. 23 Ed. 3. *Effoin* 183. But some held the contrary. For if the Cause be true, the Writ shall abate, if not true, it shall be remanded. 8 Ed. 3. 7. And it was said, if the Tenant be effoined on his Writ of false Judgment, [*Recordare*] and the Demandant admits it, the whole Matter in the Lord's Court is discontinued. 2 Ed. 3. 35. Yet see in the same Folio an Effoin allowed for him who

brought the *Recordare*, and a Feme Plaintiff was received in a *Recordare*.

If the Tenant who brings a *Recordare* makes Default, the Plea shall be remanded, and therefore in a Writ of Right against divers by several Summons, if they join in a *Recordare*, and the Record is removed, and one of them is nonsuited, it extends to all. 2 Ed. 3. 29. 10 Ed. 3. 59. But this is doubted. 18 H. 6. 28. *vide Kel.* 115.

If the Record be not fully sent, although at the Day prefixed, the Tenant makes Default, or the Demandant, this makes no Matter, as it seems. But if the Record be fully sent, if at the Day the Tenant makes Default, the Record shall be remanded, and if the Demandant makes Default, the Writ of Right shall abate. See 17 Ed. 3. 44. 27 Ed. 3. 77. 18 Ed. 3. 3.

If at the Day no Record be made, nor the Original sent, although the Demandant makes Default, he shall not be nonsuited, but a grand Distress shall go against the Bailiff, to deliver the Writ, and against the Suitors, to make the Record, but the Non-appearance of the Demandant shall be recorded. 27 Ed. 3. 77. If the Record be made, but the Original is not sent (or returned) if the Demandant makes Default, it shall be adjudged a Nonsuit, if an Original be necessary. 8 Ed. 3. 7. 10 Ed. 3. 59. *quod nota.* 17 Ed. 3. 44. 13 Ed. 3. 9. *quod vide.* 18 Ed. 3. 3.

9 H. 6. 34. *said A. (whose Heir he is) of the Messuage aforesaid, as it is said; wherefore the same A. says, that he neither can nor ought to answer without us: Let Execution of the Writ be done, if the Cause be true; and the aforesaid A. prays this, and otherwise not.* There is another Cause in the Register, thus: *Because he claims to hold the Tenements aforesaid at the Common Law, &c.* But then

A Writ of Right Close is brought, and pending the Writ the Tenant accepts a Fine *Sur consueance de Droit come ceo que il ad, &c.* yet the Land remains Ancient Demesne, as to that Action, because he hath affirmed his Plaint before the Fine; and so it was holden, 12 H. 7. Rot. 103.

40 Ed. 3. 4. King's Court in a *Præcipe quod reddat, &c.* is a good Cause to prove the Lands to be Frank-fee; and if he claim the Land by the Feoffment and the King's Charter, or by the Feoffment of Charter of the Lord of the Manor; or if he claim to hold them of the King, as of another Manor of the Honour, &c. and not to hold them of the same Manor; or if he say, That in an Assise brought

11 Ed. 3. Cause de remover, Plea 16. If the Cause assigned may be tried in Ancient Demesne, it shall not be removed.

Register 11. Br. Remove de Plea 35. vid. en 17 Ed. 3. Cause de remov. 1.

Because there were but six Suitors, and one Plaint. and the other Def. therefore removed: So four not sufficient.

before of the same Lands or Tenements at the Common Law against another Tenant, that the Tenant said that they were Ancient Demesne, and that they were Frank-fee, &c. whereupon it was found by the Assise that they were Frank-fee, &c. And another Cause appeareth in the Register, because that there are not any Suitors in the Lord's Court of Ancient Demesne to do Right, &c. But *quare* if this be a sufficient Cause or not. See 4 Inst. 270.

(a) If a Fine on Render be levied of Ancient Demesne, it seems that the Nature of the Land is changed without any Execution. 40 Ed. 3. 40. per Thorp and Thirn. So if a Judgment rendered, &c. Vide 2 Ed. 4. 28. But 18 Ed. 2. Ancient Demesne 37. If a Fine be levied *Sur consueance de Droit*, and Release, hereby there is no Transmutation of the Possession, nor is the Tenancy altered as to the Lord, &c. (or any Stranger to the Fine.) 40 Ed. 3. 4. per *Candisse*, but *Belkn. contra.* 18 Ed. 2. Ancient Demesne 37. But as to the Parties themselves, the Tenancy is changed by way of Estoppel, per *Wilby*; and so it was adjudged. For if such Conusor brings an Assise against the Conusee, or *à converso*, no Exception of Ancient Demesne lies. 21 Ed. 3. 25. And therefore if the Lord be a Party, by such Fine the Tenancy is changed, and also he shall never have a Writ of *Dilceit.* 30 Ed. 3. 13. b. or 17. per *Green.*

* Vide post. 20. A.

Vide 29 Ed. 3. 36. at the *Distringas Sectatores*, the Record was received by Attorney made by the Suitors by Writ out of Chancery.

And Note; Although the Fine be levied by a Disseisor, yet the Disseefer, as it seems, ought to sue at Common Law, but when he has recovered the Tenements, they shall be Ancient Demesne again, 3 Ed. 3. 33. and therefore if in such Case Judgment be given in the Court of Ancient Demesne, and the Recoverer enters, in Trespafs brought against him for this Entry, he cannot justify by Force of the Recovery there, for it was *coram non Judice.* 7 H. 4. 3. accordant, where these Particulars are also agreed, viz.

* 1st. If A. recovers against B. in a Writ of Right, in Nature of an Assise in Ancient Demesne, where in Truth there is a Fine levied of the same Tenements, and the Cattle of B. are thereupon taken in Execution, he shall recover

If

- D** If a Frank-tenant of Ancient Demefne, who holdeth his Tenements by Knights Service and in Fee, be ousted and diffeifed of his Lands or Tenements, he fhall fue at the Common Law, and not in Ancient Demefne, for no Lands are Ancient Demefne, but Lands holden in Socage. Post. 14. 26 H. 8. 4. for Lands in Gavellkind, fee 14. b.
- E** And a Man fhall have a Bill of *Frefh Force* within forty Days in the Lord's Court of Ancient Demefne, for the Lands after the Diffeifin, and without fuing any Writ thereupon; as a Man fhall have Lands in a City or Borough: And there in that Cafe, if the Tenant hath any Matter to prove the Lands to be Frank-fee, he fhall have a *Recordare* to remove the Plea out of Ancient Demefne into the Common Pleas, &c. 26 H. 8. 1. 4. 8 H. 7. 11. 3 H. 6. 34. 34 H. 6. 35. or 44 Ed. 3. 10. 4 Infl. 270. contra.
- F** And although the Plea in Ancient Demefne be there without Writ, &c. if the Tenant remove the Plea out of Ancient Demefne by a (a) *Recordare*, and for Cause fhewed in the Writ, if the Cause be not good, the Tenant in the Common Pleas fhall not fhew any new Cause to retain the Plea in the Common Pleas: But if the Cause in the Writ be, *which he claims to hold at the Common Law*, then in the Common Pleas he may fhew what Cause he will to retain the Plea there; which Cause fhall prove the Tenements to be Frank-fee. 21 Ed. 3. 32. Br. Auncient Demefne 18. or 34 H. 6. 35. 1 H. 7. 30. 50 Ed. 3. 24. the Lord made a Leafe for Life, that is a good Cause. 1 H. 7. 30. per Townfend.
- G** And in Ancient Demefne, if the Demandant and Tenant put themselves upon the (b) Grand Affife, or the Tenant vouch a Foreigner, or plead a Foreign Plea, which cannot be tried in the Lordship there; then a *Superjedeas* fhall be granted out of the Chancery, directed unto the Lord of Ancient Demefne, or his Bailiffs, if the Writ were directable to the Bailiffs, that they fhould furceafe, &c. And the Party Defendant fhall fue his Writ of *Warranty* of *Charter* againft the Vouchee, &c.

cover in a Replevin, becaufe it was *coram non Judice*; nay, although the Manor was in the King's Hands at the Time of the Fine levied.

But, 2dly, It is there admitted, that if Part of the Tenements fo recovered be Ancient Demefne, of which no Fine was levied, in fuch Cafe the Bailiff may juftify the Taking of the Defendant's Cattle in Execution in any Place within the Manor, although that fuch Place was not Ancient Demefne. 7 H. 4. 28, 29. Yet fee 8 Ed. 4. 6. If one recovers, in a Court of Ancient Demefne, Lands, whereof Part are Ancient Demefne, and of the Refidue a Recovery had been before had in the King's Court. If the Party brings Debt for the Damages recovered, he fhall be barred of the Whole, becaufe the Damages are to be given intire.

(a) Note; If the Cause in the *Recordare* be fpecial, as, *For that he claims to hold of the Infeoffment of J. S. Lord of the Manor*, &c. there he cannot fhew another Cause. But if the Cause be general, *viz. For that he claims to hold at*

the Common Law, there may fhew the Cause fpecially. 9 H. 6. 34, 35.

Yet fee where the Tenant removed the Plea, for that he claimed by Prefcription to hold at Common Law, and yet in *C. B.* he was received to wave this Cause, and to fhew a Confirmation by the Lord. 21 Ed. 3. 32.

(b) The Plea fhall be removed to be tried, and afterward remanded to be adjudged, 14 H. 4. 26. See 19 H. 6. 53. on a Foreign Voucher, Day was given to the Party himfelf in *C. B.* to determine his Warranty, and there a Summons *ad Warrantizand'* iffued, and the Vouchee came and vouched over *B.* who entered into Warranty, and vouched over, 5 Ed. 6. *Dyer* 69. See the Tenant in a Writ of Right Clofe fued in Nature of a Writ of Right at Common Law, and puts himfelf on the Grand Affife; and therefore the Plea was removed *per Recordare*; but it was afterwards remanded by the Court, for by the Custom they may elect a Jury inftead of the Grand Affife. *Stafford's Cafe*, *Dyer* 111. See 1 H. 7. 29. *contra.*

And

And if the Sheriff do remove the Record in Ancient Demefne by *Recordare* H

12 H. 7. Rot. 103. It is holden, that if they proceed after the Record removed, and award Execution, that it is not void. 16 Ed. 3. 3. *Procefs* 167. The Party had *Audita Querela* against the Judges upon that Cafe: And 17 Ed. 3. *ibid.* 186. it was holden that the Sheriff shall be punished for his Contempt.

in the Common Pleas, and afterwards the Bailiffs in the Court of Ancient Demefne proceed in the Plea (notwithstanding the Removing of the Record) then the Tenant may sue a *Certiorari* directed unto the Justices of the Common Pleas, to certify the Tenor of the Record into the Chancery, and of this Removalment; and upon the Certificate into the Chancery, the Tenant shall

have an (a) *Attachment* against the Bailiffs, who proceeded in the Plea directed unto the Sheriff, for to arrest them, returnable in the Common Pleas, to answer unto the King, and also unto the Tenant who sued forth the *Recordare*.

[14.]

But in Ancient Demefne, if the Tenant vouch a Foreigner to Warranty, then the Tenant ought to sue his Writ of *Warrantia Chartæ* returnable in the Common Pleas against the (b) Vouchee, and upon this Writ sued to purchase a *Superfedecas* directed unto the Bailiffs of Ancient Demefne, commanding them to surcease until the Plea in the *Warrantia Chartæ* be determined in the Common Pleas. And if the Bailiffs proceed after such Writ sued forth, and directed unto them, the Tenant who sued the Writ may have an *Attachment* of them directed unto the Sheriff, &c. that he do attach them to answer in the Common Pleas at a certain Day, &c. as well unto the King as unto the Party, for the Contempt, &c. But if the Plea of *Warrantia Chartæ* be discontinued in the Common Pleas, then the Demandant in the Writ of *Droit Clofe* may sue a Writ out of the Chancery directed unto the Justices of the Common Pleas, to certify the King in the Chancery, if the Plea of *Warrantia Chartæ* be pendent or discontinued, or not, so that if it be discontinued, &c. or determined, he may send unto the Bailiffs of Ancient Demefne, that they proceed in the Plea. A

Vide 13. D. 29 R. 2. Ancient Demefne 41.

Sokemans.

And if the Tenant claim to hold the Lands of the Lord in Ancient Demefne by Knights Service, &c. the same is a good Cause for to remove the Plea, because that Lands which are holden of the Manor, which shall be taken Ancient Demefne, shall not be holden of the Lord by other Services than Socage; for the Tenants in Ancient Demefne are called *Sokemans*, that is to say in *Engliff*, Tenants of the Plough. B

50 Ed. 3. 6. per Sidenham, contr. if he refer but Socage Tenure.

And therefore if the Lord of a Manor in Ancient Demefne, before the Statute of *Quia Emptores terrarum*, maketh a Feoffment in Fee of the Parcel of the Lands of the Manor, to hold of him by Knights Service, such Tenant shall not have a *Monstraverunt*, if he be distrained for other Services than of Right he ought to do, because his Lands are not Ancient Demefne of the King, and yet they are holden of the Manor which is Ancient Demefne: But C

(a) Where the Plaintiff shall have a special Action on the Cafe, and recover Damages, and yet the Proceedings be void, &c. See 14 Ed. 3. *F. Action sur le Cafe* 39.

(b) *Vouchee*. See 13 Ed. 1. *Voucher* 269.

and after the Warranty determined they shall give Day to vouch by Prefixion in the Court of Ancient Demefne, and the same Law for a Court Baron. See 35 Ed. 3. *Voucher* 316.

it is intended of such Tenures which shall do the Services of the Plough, viz. to plough and till the Lord's Lands, to mow the Lord's Meadows, or other such like Services as are for the maintaining of the King's Sustenance or Victuals, and his Subjects; and for such Services such Tenants have such Liberties and Privileges in the Law, that they may the more quietly use their Husbandry, and do their Services.

Writ de Monstraverunt.

D THE Writ of *Monstraverunt* lieth for the Tenants of (a) Ancient Demeſne who hold by free Charter, and not for thoſe Tenants that hold by Copy of Court Roll, or by the Rod, according to the Cuſtom of the Manor, at the Will of the Lord. And theſe Tenants ought to be Tenants which hold of a Manor which was in the Hands of *S. Edward* the King and 49 Ed. 3. 22. Confefſor, or in the Hands of King *William* the Conqueror; which Manors are called Ancient Demeſne of the King, or the Ancient Demeſne of the Crown of *England*. And to thoſe Tenants (who hold of ſuch Manors) there
E are many and divers Liberties, Gifts and Grants by the Law; as to be (b) quit of Toll, and Paſſage, and ſuch Impoſitions which Men ſhall demand of them for the Goods or Chattels ſold or bought by them in Fairs or Markets; and to be quit of Taxes and Tallages granted by Parliament; if not, that the King lay a Tax upon Ancient Demeſne, as he may for ſome great Cauſe, whenſoever it ſeemeth good unto him. And alſo Tenant in Ancient Demeſne ought to be acquitted of the Payment of the Expences of the Knights which came to Parliaments, and alſo they (c) ought not to be impanelled or put upon Juries or Inqueſts in the Country out of their
F Manor or Seigniory of Ancient Demeſne, if they have not other Lands at the Common Law, for which they ought to be charged, &c. And if ſuch Tenants, or any of them who hold of the Manor of Ancient Demeſne, be diſtrained to do unto their Lords other Services or Cuſtoms than they or their 40 Ed. 3. 44. Anceſtors have uſed to do, then they may ſue this Writ of *Monstraverunt* directed unto the Lord, commanding him that he do not diſtrain them to do other Services or Cuſtoms than they have uſed to do: Or they may have
Quere if they ſhall have this Writ without being diſtrained.

19 H. 6. 66. per *Newton*. Tenants in Ancient Demeſne ſhall be quit of Toll of Things which they ſell, which are ariſing of their Lands, and ſo of all Things which they buy, which are for the Manurance of the Land; but *quere* if they ſhall be quit for all Things bought and ſold.

Vide 161. They ſhall be quit of Suit to Leets and Hundreds. *Vide* 22 El. *Dyer* 377. *Regiſter* 181. *Br. Ancient Demeſne* 44. 7 H. 6. 35. *Martin. acc.*

(a) And therefore a Tenant of a newly approved Waite, though it be aliened by the King, and to hold of the Manor by the Cuſtom of the Manor, is (not) Ancient Demeſne. 21 Ed. 3. 56. per *Thorp*. See *Hoveden* 460. *Willielmus ſenior Anno* 1086. *Totum Angl. deſcribi fecit*. And ſee *Ingulphus* 870. and 908.

pro Diviſione Comitatum. Vide bene 49 Ed. 3. 22.

(b) Acquitted from Amerciaments of the County. *Clauf.* 12 H. 3. m. 11. See 32 Ed. 3. *Monstraverunt* 6. and *Rot. Parl.* 6 Ed. 3. No. 3.

(c) i. e. If they have not other Lands in Frank-fee. 42 *Aff.* 8.

this

this Writ of *Monstraverunt* directed unto the Sheriff, and that is where the Writ of *Monstraverunt* is first sent unto the Lord, and that he do not distrain his Tenants, &c. Or they, upon this Writ sued and directed unto the Lord, may have and sue another Writ directed unto the Sheriff, rehearsing, That where he hath sent his Writ unto the Lord of Ancient Demesne, that he should not distrain his Tenants, &c. and if the Lord will not do it, and suffer the Tenants to be in Peace, that then the Sheriff shall do it, and cause the Lord to suffer the Tenants to be in Peace, and that he do not distrain them for other Services than of Right they ought to do. And the Form of the Writ directed unto the Lord is such: (a)

40 Ed. 3.
These Words
prove that
they may
have this Writ
before Dis-
tress.

[15.]

The King to the Abbot of C. greeting: Your Men of the Manor of I. which is of the Ancient Demesne of the Crown of England, as it is said, have shewed unto us, that you require of them other Customs and other Services than they ought to do, and than their Ancestors, Tenants of the same Manor, have been accustomed to do in the Times wherein that Manor was in the Hands of our Progenitors, formerly Kings of England, or in our Hand. And therefore we command you, that you require not, or permit to be required from the aforesaid Men, other Customs and other Services than they (b) ought to do, and than their Ancestors aforesaid have been (b) accustomed to do in the Times aforesaid. And unless you shall do this at our Command, we command A. our Sheriff of Lincolnshire, to do it. Witness, &c. And upon this Writ they may sue another Writ of Monstraverunt directed unto the Sheriff, which shall be in this Form: The King to the Sheriff of Lincolnshire, &c. The Men of the Abbot of the Manor of I. which is of the Ancient Demesne of the Crown of England, as it is said, have shewed unto us, that the same Abbot requires of them other Customs and other Services than they ought to do, &c. (as above, until) in our Hand. Wherefore we commanded the same Abbot, that he should not require, or permit to be required from the aforesaid Men, other Customs or other Services than they ought to do, and than their Ancestors aforesaid have been accustomed to do in the Times aforesaid. And therefore we command you, that unless the same Abbot shall do this our Command, that you cause it to be done, that we may hear no more Clamour thereupon for want of Justice, &c.

And it seemeth, that by this Writ directed unto the Sheriff the Sheriff may charge the Lord, that he do not demand nor distrain them for other Services than they ought to do, and that the Sheriff may make Resistance and Refeous unto the Lord, if he distrain the Tenants for other Services, &c. and that the Sheriff may take the Power of the County to resist the Lord in such

(a) See this Writ of *Monstraverunt* founded on a Petition and Ordinance of Parliament. 18 Ed. 1. 27.

(b) *Quære*, If he shall not have a *Monstraverunt* where his Estate is confirmed, to hold by less Services. 49 Ed. 3. 7. See 21 Ed. 3. 33. *F. Cause de remover Plea* 18. Where it is adjudged, that it is not made Frank-fee by the Confirmation. But *Wilby* held the contrary. *Hill* said, no *Monstraverunt* can be, &c.

See 30 Ed. 18. where it is argued, if the Lord in Ancient Demesne confirm the Estate of his Tenant to hold by 2s. *freely and quietly from all other Customs*, and held by *Green* to be Frank fee, and on a Distress for more Services, the Tenants shall be aided in Replevin. But by *Wilby* and others, it continues Ancient Demesne, and he shall have a *Monstraverunt*, and Count upon his Case.

Cafe, or the Sheriff may command the Neighbours, who dwell next to the Manor, that they resist and do Rescous unto the Lord, if he will distrain his Tenants, &c. And it seems they may justify the same by the Commandment of the Sheriff, if the have such a Writ sent unto him, &c. And after the Writ directed unto the Sheriff, if the Lord distrain, the Tenants may sue an *Attachment* against him, returnable in the Common Pleas or the King's Bench, to answer to them for this Contempt; and if it be found for them, they shall recover their Damages.

D And note, that the Writ of *Monstraverunt* shall be sued by many of the Tenants without naming any of them by their proper Names, but generally, *Monstraverunt nobis homines*, &c. But in the Attachment against the Lord by the Tenants, the Tenants ought to be named by their proper Names, thus:

Com. 129.
8 H. 6. 26.
1 H. 5. 13.

(a) *The King, &c. If A. of B. C. of F. and the Men of the Abbot M. of the Manor of I. which is of the Ancient Demesne of the Crown of England, as it is said, shall make you secure, &c. then put, &c. the aforesaid Abbot, that he be before us, &c. wheresoever, &c. to shew why he requireth of the aforesaid Men other Customs and other Services than they ought to do, and than their Ancestors, Tenants of the same Manor, have been accustomed to do in the Times wherein that Manor was in the Hands of our Progenitors, formerly Kings of England, or in our Hand, contrary to our Prohibition (if the Case be so). And have you there the Names of the Pledges and this Writ. Witness, &c.*

E And there is another Writ of *Monstraverunt*; where the Tenants of any Hamlet, which Hamlet is Parcel of a Manor of Ancient Demesne, are distrained by the Lord, they shall have such Writ:

The King, &c. Your Men of the Hamlet of I. which is a Member of the Manor of B. which is of the Ancient Demesne of the Crown of England, as it is said, &c. have shewed unto us, &c.

F And it seems, that in the Writ of *Attachment* he ought or may name all those Tenants by their proper Names which are distrained after the Prohibition delivered unto the Lord; and it behoveth not to name other Tenants by their proper Names, but in the Generality, *And the Men, &c.* And if one of those, who is named by his proper Name, will not sue, &c. he shall be severed, &c. And he that is *Nonfuit* shall not grieve his Companions. And it seemeth, that every one shall recover his Damages *severally*, (b) *because they are severally distrained*, and one may be more damnified than another, &c.

H And one Tenant may sue the Writ of *Attachment* in his own Name by his proper Name, and in the Name of the other Tenants, by general Words, &c. *And the Men, &c.*

(a) In a Writ of Admeasurement it is not necessary to name all the Tenants; for they shall be admeasured, though not named. 8 H. 6. 26. And in an Action on the Statute of *Winton*, it is not necessary to name all the Inhabitants of the Hundred, but only some in certain. And

so in a *Retordare* adjudged, 6 H. 8. and also 3 Eliz. But the Justices shall direct Judgment to be for the Plaintiff notwithstanding. See 6, 7 Eliz. *Dyer*.—

(b) Note; They may make joint or several Counts. 39 Ed. 3. 6. *per Belkn.* See *infra* 16.A.

And if the Tenants do sue an *Attachment* against the Lord, because he distrained them after the Writ of *Monstraverunt* delivered unto him, and pending the Writ of *Attachment* the Lord distrain them again by their Goods; then the Tenants shall have a special Writ of *Attachment* against the Lord, rehearsing the Matter; and in the same Writ the Sheriff shall be commanded to re-deliver unto the Tenants their Goods, if the Lord have taken them, &c. And this Writ shall be sued only in the Name of those Tenants which are again distrained pendent the Suit, and not in the Name of them all, as the other Writ is sued; and the Writ shall be such:

[16.] *The King to the Sheriff, &c. If A. and B. the Men of the Abbot of C. of the Manor of N. which is of Ancient Demesne, &c. shall make you secure, &c. then put, &c. the aforesaid Abbot, &c. to shew why whereas lately at the Prosecution of the said Men suggesting to us, that the aforesaid Abbot had required other Customs and other Services than they ought to do, and than their Ancestors, Tenants of the same Manor, &c. (until Kings of England) We commanded you, that you should put by Gages and safe Pledges the aforesaid Abbot, that he should be before us from Easter Day in fifteen Days last past, wheresoever, &c. to answer the aforesaid Men concerning the Premises, the said Abbot (pending the said Plea of Attachment before us) hath therefore more grievously distressed the aforesaid Men, and hath taken from them all their Goods, Chattels and Cattle found in the same Manor, and yet detains them from them, whereby they are less able to prosecute the said Plea of Attachment, because of Poverty, in Contempt of us and our aforesaid Command, and to the no small Expence of the aforesaid Men and the Delay of the Prosecution of their Right, and to the manifest Debasing of their Estate. And cause the aforesaid Cattle, Goods and Chattels in the mean time to be delivered to the same Men by sufficient Security. And have there the Names of the Pledges and this Writ. Witnesses, &c.*

V. sup. 15. G. And in this Writ of *Monstraverunt* the Plaintiffs in the Writ of Attachment A
39 Ed. 3. 6. may count severally, and then they shall recover several Damages. But they
48 Ed. 3. 44. may count together in one Count, and declare how they were severally dis-
39 Ed. 3. 6. strained, &c. and it is not necessary to alledge in the Count the Day or the
ret. Monstr. 2. Place where the Lord distrained them. And the Form of the Count or De-
49 Ed. 3. claracion is such:
per Belknap.

A. B. was summoned to answer C. D. and F. and the Men of the aforesaid A. of the Manor of S. which is of the Ancient Demesne of the Crown of England, &c. of a Plea, wherefore he requires of them other Customs and other Services than they ought to do, and than their Ancestors, Tenants of the same Manor, have been accustomed to do in the Times wherein that Manor was in the Hands of his Majesty's Progenitors, Kings of England, to the great Damage of the said C. D. and F. &c. And whereupon the same Men, by T. S. their Attorney, complain, That whereas their Ancestors, Tenants of the same Manor in the Time when that Manor was in the Hands of Lord Henry, formerly King of England, Great Grandfather to the Grandfather of the Lord the present King, held their Tenements by certain Services, namely, every one of them held one Yard-Land of the same Manor, &c. by Fealty and the Service of five Shillings, and doing Suit at the Court of the said Manor of S. twice in the Year, to wit, at the Feast of Saint Michael and at the Feast of the Passover; and if a Writ of Right happened to be pleaded in the same Court, by doing Suit in the same Court from three Weeks to three Weeks, &c.

so long as that Writ was depending in the same Court, and when the Lord the King lays a Tax (or Tallage) upon his Boroughs and his Demesnes, &c. for all Services, and they who held more Land of the aforesaid Manor rendered more Rent, &c. And the same Tenants have continued this Kind of Estate from the Time of the same Henry the Great Grandfather, &c. from King to King, the Progenitors, &c. until the Time of the aforesaid Lord King Edward the Grandfather, &c. That the aforesaid A. Lord of the Manor aforesaid, hath distrained them the said C. D. and F. and the other Men, &c. to do Suit at the aforementioned Court from three Weeks to three Weeks throughout the whole Year, &c. and by laying a Tax (or Tallage) upon them, high and low, at his Will, and requiring Services from them for marrying their Sons and Daughters, and other villainous Services and Customs, which they ought not nor have been used to do; whereupon they say they are injured and have sustained Damage to the Value of one hundred Pounds, and thereupon they bring Suit, &c.

B And whether they shall recover severally Damages upon the joint Count, it is a Doubt, yet it seemeth reasonable that they may, because it is several in its Nature, because they count upon the several Tenures, &c. and how that he hath distrained them severally; by which it seems but reasonable, that the Jury do inquire of the Damages severally, if they pass for the Demandants, or that several Writs of Inquiry of Damages be awarded in that Case, if the Matter be adjudged with the Demandants. But it seems no Tenant shall recover Damages, but those who are specially named in the Writ of Attachment sued upon the *Monstraverunt*, and not to other Men.

C And note, That the Lord of Ancient Demesne shall not be put to answer to the Writ of Attachment sued against him upon the *Monstraverunt*, before the Court be (a) certified by the Treasurer and Chamberlain of the Exchequer, whether the Manor be Ancient Demesne. And therefore it behoveth the Plaintiffs in the *Monstraverunt* to sue forth a special Writ unto the Treasurer and Chamberlains of the Exchequer to certify the same; and the Writ is such:

The King to his Treasurer and Chamberlains, greeting: Because for certain Reasons we are willing to be certified whether the Manor of I. in the County of C. be of the Ancient Demesne of the Crown of England or not, we command you, that having searched our Domesday Book, you without Delay distinctly and openly make us more certain concerning that which you thereupon shall find, under our Seal of our Exchequer, sending again to us this Writ. Witnesses, &c.

D And note, That the Book which is called *Domesday Book* was made in the Time of S. Edward, and all the Lands which were in the Scifin, and in the Hands of the said S. Edward at the Time the said Book was made, are Ancient Demesne, and the Lands which were in other Hands, and are not named E in the said Book, are Frank-fee: And those Tenants which held in base Tenure, as by Copy of Court-Roll, or by the Rod, cannot sue nor maintain this Writ against the Lord: And the Death of one Tenant, nor his Nonsuit, shall not (b)

(a) It seems, that the Certificate lawfully coming into Court by *Certiorari* and *Mittimus* is authentical and conclusive, though there be no Issue joined, whether Frank fee or Ancient Demesne. 7 H. 6. 32. And see accordant 39 Ed. 3. 6. it is at the Peril of the Plaintiff.

(b) The Reason is, because as they are several Tenures, so the Torts and Damages are several, and so it is in Error, Attaint and *Audita Querela*; contra in a *Ne injuste vexes*. 1 H. 5. 13. Although the Count in the *Monstraverunt* be joint. 19 Ed. 3. *Monstraverunt* 5.

19 Ed. 3. pl. 5. abate the Writ. And if the Frank-tenants, and the Tenants by base Tenure ^F
 7 H. 5. 13. join in a *Monstraverunt*, the Writ shall not abate, but for the Tenants by
 base Tenure only.

Writ de Warrantia Diei.

[17.] **W**RIT of *Warrantia Diei* lieth in Case where a Man hath Day in any ^A
 Action brought against him to appear in proper Person, and the King
 at or before the Day send him in or about his Service, so as he cannot ap-
 pear in Court at the Day; then may he sue forth this Writ directed to the
 Justices, reciting the whole Matter, commanding them that they do not re-
 cord his Default for that Day, for the Cause before-mentioned: And it is
 not material, whether the Cause be true or not, when the King doth certify
 that the Party is in his Service. For it seemeth by the Words of the Writ,
 that the King by his Prerogative may warrant this Default for a Day. And
 so it seemeth, that if the Tenant in a *Præcipe quod reddat* at the *Grand Cape*,
 or the *Petit Cape* returned, make Default, that before Judgment upon this
 Default the King may send such a Writ unto the Justices, rehearsing that the
 Party is in his Service, and commanding them that his Default do not preju-
 dice him: *And it standeth with Reason that the King may so do, because that* ^B
every one is bound to serve the King in his Business. But what Process shall the
 Court award, if the Tenant will not appear at the Day of the Default recorded,
 nor after, when the Writ of *Warrantia Diei* comes unto the *Justices*? It seem-
 eth a new Summons shall issue out of the Common Pleas to summon the Te-
 nant anew, because that his Default at his Return is excused by the Writ of
Warrantia Diei. But if the Writ *Warrantia Diei* do not excuse the Default
 at the *Grand Cape*, then it seems a new *Grand Cape* shall go forth upon the
 first Default returned at the Summons of the *Præcipe quod reddat*. *Quære* of ^C
 that. And the King may grant such Writs to save two Defaults at two several
 Days, &c. *Quære* of these Matters, because they are out of Use at this Day.
 But the Form of the Writ is such:

The King to his Justices of the Bench, greeting: Know ye, that A. was in our ^D
Service by our Command on Monday the Morrow of fifteen Days of Easter last
past; so that on that Day he could not be present at the Plea which is before you
by our Writ, between B. Demandant, and the aforesaid A. Tenant, of one Messuage
with the Appurtenances in N. whereupon the same A. as he saith, hath vouched
C. to Warranty thereof against the aforesaid B. And therefore we command you,
that the aforesaid A. be not put in Default for his Absence on that Day, nor lose
in any Thing, because, as to this Matter, we will warrant to him that Day.
Witness, &c.

The Form of a Writ to sue two Defaults is: *The King, &c.* (as above):
Know ye, that A. was in our Service by our Command on Thursday in eight Days
of Saint Hilary, and on Monday in the Morrow of All Souls last past; so that
on those Days he could not be present at the Plea which is before us by our Writ,
between, &c. And therefore we command you, that the aforesaid A. be not put
in Default for his Absence on those Days, because, as to this Matter, we will war-
rant to him those Days. Witness, &c.

And

E And these two Writs are not granted but by the King himself by the Rule of the Register; and the King may grant such Writs unto the Mayor and Sheriffs of *London*, or unto the Bishop of *Durham* in the County Palatine, or unto the Justices of Assise or in the Eyre, or unto the Sheriff: And these Writs may be granted as well for the Demandant and Plaintiff as for the Tenant; and then the Writ is such:

F *The King, &c. Know ye, that A. was in our Service on Monday in the Morrow of fifteen Days of Easter last past; so that, &c. between him, A. Demandant, and B. Tenant, &c. And there it shall be said, in the Morrow of fifteen Days of Easter, because that the Pleas (a) cannot be holden in fifteen Days of Easter, because that is Sunday, which is the Sabbath-day. And the King may grant this Writ by Testimony of his Steward, thus:*

Dyer 154.
Ante 15. P.

The King, &c. Because A. was before our Steward and Marshal on Monday in fifteen Days of Saint John the Baptist last past, in divers Inquisitions which were summoned before the same Steward and Marshal on the aforesaid Day at E. as our same Steward hath testified before us: We command you, that you do not amerce the aforesaid A. for that, because he came not before you in other Inquisitions which were summoned before you on the same Day, nor suffer him to lose Issues, if he hath been liable to lose any before you, upon that Occasion. Witness, &c.

G And it seems by this Writ, that the Justices ought to make a special Entry thereof, and to save the Issue of this Juror, and also to make a special Estreat of this Matter, and to levy no Issues upon these Jurors, for whom such Writs come unto the Justices.

H And if a Man be essoined of the King's Service in any Action, &c. whereas in Truth he is not in the King's Service, then the Plaintiff or Demandant may sue forth a special Writ out of the Chancery directed unto the Justices, rehearsing that he is not in the King's Service, commanding them to proceed. But by the Statute of *Gloucester*, if he do not bring his Warrant at the Day given, he shall lose twenty Shillings for the Journey; and shall be in the King's Mercy, and the Essoin dissolved. And if the Plaintiff purchase such Writ directed to the Justices, that he is not in the King's Service, then the Essoin shall not be adjourned, but shall be presently quashed, and he shall not have Day by Adjournment to bring in his Warrant to warrant the Essoin.

(a) See the Case of *Huggard and Knevett*, 5 Mar. Dyer 154. & ante 15. P.

* *Writ of False Judgment.*

[18.] WRIT of False Judgment lieth where False Judgment is given in the County, or in the Hundred, or in other Court Baron which is not a Court of Record, in a Plea Real or Personal, as if in a Writ of Right Patent, or in other Personal Plea; there the Party, Plaintiff or Defendant, which is grieved, shall have this Writ, and the Writ shall issue first out of the Chancery: And if the False Judgment be given in the Sheriff's County Court, then the Writ shall be directed unto the Sheriff himself, and shall be such: A

22 Aff. 64. Br. Error 120. If the Freeholders be recorded by Plea, where it ought to be by Writ, then the Writ shall be directed unto the Sheriff himself, and shall be such: it is Error, and not void. *Et coram non Judice*: But where Judgment is given of Lands, Contract or Covenant, which is out of their Jurisdiction, it is void, *Et coram non Judice*.

Henry, &c. to the Sheriff of Lincolnshire, greeting: If A. shall make you secure, &c. then in your full County cause to be recorded the Plaint which is in the (a) same County by our Writ of Right, between A. Demandant, and B. Tenant, of one Messuage and one hundred Acres of Land with the Appurtenances in C. whereof the same A. complains that False Judgment hath been done to him in the same County; and have you that Record before our Justices at Westminster such a Day under your Seal, and by four lawful Knights of the same County of those who were present at that Record: And summon by good Summoners the aforesaid B. that he be then there to bear that Record. And have you there the Summoners, the Names of the four Knights, and this Writ. B

V. 4 & 5 Ma. Dyer 164. The Writ was challenged because it was under your Seal and the Seals of four lawful Men of the same Court, and good, as it seems. Vide Dyer 373. & infra D.

15 Ed. 3. 9. And if the Tenant hath aliened the Land after Judgment given against the Demandant, then the Summons shall be made in the Writ against him who is Tenant of the Land, and against him who was Tenant at the Time of the Judgment given, by these Words, viz. *And summon by good Summoners the aforesaid B. and C. who now hold that Messuage and Land, that they be then there to bear, &c.* C

And if the False Judgment be given in another Court Baron than in the Sheriff's Court, then the Writ of False Judgment is called a Writ of *Accedas ad Curiam*, and shall be directed unto the Sheriff; and the Writ is such: D

The King to the Sheriff of Lincolnshire, greeting: If A. shall make you secure to prosecute his Claim, then having taken with you four discreet and lawful Knights of your County, go in your own Person to the Court Baron of C. and in that full

* Note; In a Writ of False Judgment, if the Judgment be reversed, the Suitors are amerced, and the Court shall give the former Judgment which the Suitors ought to have given, 22 Ed. 3. 2. And Note; the Amerciament was assereed by the Justices, 9 Eliz Dyer 263. See *Pasc.* 10 Ed. 3. Rot. 3. whereby it appears, if the

Plea be discontinued, and afterwards the Plaintiff is Nonsuit, and Judgment final given against him on a Writ of False Judgment, he shall be restored to the Right only. See Dyer 373.

(a) Note; The Words *same County* ought to be *same Court*, &c. *Quære.* See Dyer 268.

Court

Court cause to be recorded the *Plaint* which was in the same Court by our Writ of Right, between A. Demandant, and B. Tenant, of one Messuage, &c. whereof A. complains that False Judgment hath been done to him in the same Court; and have that Record, &c. under your Seal, and (a) by four lawful Men of the same Court of those who were present at that Record: And summon, &c. and have you there the Names of the aforesaid four Men, and this Writ. V. supra E

E And in this Writ of *Accedas ad Curiam* he shall take with him four Men, but it needeth not that they be Knights: But so shall it not be in the other Writ of *Recordari facias Lequelum*, which is in the County. But both Writs shall be returned under the Sheriff's Seal, and the Seals of four of the Suitors of the same Court. And in the Writ of False Judgment which is *Accedas ad Curiam*, it is a (b) good Return for the Sheriff for to say, that after the Receipt of the Writ, and before the Return thereof, no Court was holden; and also that he required the Lord to hold his Court, and he would not, so as he could not execute the same. And thereupon the Justices shall award a *Disstringas* directed unto the Sheriff, to distrain the Lord to hold his Court; and *Sicut Alias, &c.*

F (c) In a False Judgment against an Abbot the Plaintiff was Nonsuit, and the Abbot had a *Scire facias* against the Plaintiff, to shew why he should not have Execution, and to have the Judgment executed returnable at 15 *Pasch.* at which Day the Plaintiff appeared, and assigned his Errors, and tendered Sureties to sue with Effect, and prayed a *Scire facias* against the Abbot to hear Errors. And the Opinion of the Court was, that he might assign the Errors against the Abbot without suing any *Scire facias* against him, because they had Day by the Roll.

G (d) If the Writ of False Judgment abate for Default in the Writ, then the Plaintiff shall not have a *Scire facias ad audiend' Errores* upon the Record certified,

(a) Note; It is by four lawful, &c. and not under the Seals of four lawful Men. Dyer 164. and see *ibid* 373.

(b) Note; If the Sheriff return, that the Suitors will not record *le Parol* (or Plea) a *Sicut alias Disstringas* shall issue against all the Suitors: And if at the Day some of the Suitors do appear, and others do not, the Court here shall accept the Record by the Hands of those that appear; for perhaps at the *Disstringas sicut alias* the others will disavow the Record; but their Issues shall be saved, and the *Disstringas sicut alias* shall issue as well against those that appear as against the others. And by *Hill*, if on the first Writ the Record had been delivered to four Suitors, and two of them had appeared, and the other two made Default, the Record had been (well) accepted. See 1 *Ed.* 3. 9. 26 *Ed.* 3. 61. 12 *H.* 4. 23. And an *idem Dies* shall be given to those that appear, according to 29 *Ed.* 3. 26. * For it may be, that at the other Day those who now appear may make Default. But if the Sheriff

returns the Names of those who refuse, the *Disstringas* shall issue only against them; and if any of them make Default, the Record shall not be received by the Hands of those that appear, but their Issues shall be saved, and a new *Disstringas* shall go both against them and those who made Default. 9 *Eliz.* Dyer 262.

(c) See 6 *Ed.* 6. Dyer 76. b. Error on a Judgment in a *Quare impedit*, the Record was removed, but the Party did not assign Errors; wherefore he that recovered brought a *Scire facias* to have Execution. It appears the Party warned may come in at the Day to assign Errors without a *Scire facias ad audiendum Errores*. 21 *H.* 6. 34. 20 *H.* 6. 18.

(d) If a Record be removed by Writ of Error, though the Writ be abated for Default of Form, yet the Judgment being of Record before the Writ of Error, and the Record being here, the Party shall have a new Writ of Error, *quoad coram vobis*: But by the Writ of False Judgment, that which was (not) a Record before is to be made

certified, because it cometh without an Original, when the Original abateth. But if the Plaintiff die, it seems that if the False Judgment be given in the base Court upon a Writ of *D. oit Patent*, that then this Heir shall have a *Scire facias ad audiend' Errores* against him who recovereth upon that Record which is removed into the Common Pleas. And if the Plaintiff in the Writ of False Judgment be Nonfuit, whether the other Party shall sue Execution upon this Record so removed against the Plaintiff, without suing forth a *Scire facias*, is a Question. But *Hill. 23 H. 6.* the Opinion was, that he shall have Execution without suing forth a *Scire facias*.

20 H. 6. 18.
44 H. 6. 48.
31 H. 6. 51.
14 H. 4. 39.
7 Ed. 4. 23.
34 H. 6. 48.
Contrary, if the Justices be removed in the King's Bench by a Pone.

And Tenant at Will according to the Custom of the Manor, which is Tenant by Copy of Court Roll, shall not have a Writ of False Judgment upon a Judgment given against him: But where False Judgment is given upon a Writ of *Justicies* directed unto the Sheriff, the Party grieved shall have *Faux Judgment*, and not a Writ of Error, although the Judgment be of Debt, or Treipsafs, over the Sum of twenty Shillings.

2 H. 4. 4.
21 Ed. 3. 45.
45 Ed. 3. 1.
acc. therefore it seemeth Error lieth in a Court of Pipe-powder.

And a Man shall not have a Writ of False Judgment but in the Court where there are Suitors; for if there be no Suitors, there the Record cannot be certified by them. And upon False Judgment given in Court before Bailiffs, or others who hold Plea by Prescription, in every Sum in Debt by Bill before them, he shall not have a *Faux Judgment*, but a Writ of Error thereupon. *Quod vide M. 4 Ed. 4.* in Title *Treipsafs. Post. 19. I.*

Vide 13 Ed. 4. 18. 6 Ed. 4. 43. 72. 4. 23.

made a Record; and therefore if the Writ be abated (as in a Writ of False Judgment on a Judgment in Ancient Demesne, was in *Cur' Regis* where it should be *Reginæ*) there is not any Record made or removed, but only an *Escrow*, and is as if the Suitors had brought in the Record without a Writ to warrant it; and therefore the Plaintiff in that Case, after such Writ abated, shall not have a *Scire facias* to warn the Party *ad audiendum Errores, &c.* But it seems the Plaintiff shall have a new Writ of False Judgment, because the Record is not removed: *Quære*; for it was denied by *Rolph. 3 H. 6. 26.* But where a Writ of False Judgment abates by Death of the Party, there, for that the Record was well made and removed, a *Scire facias* lies. *Dyer 164. 15 H. 6. F. False Judgment 17,* and so note the Diversity. In a *Recordari* out of Ancient Demesne, the Parol shall be remanded, if the Plaintiff is Nonfuit. *2 Ed. 3. 29. 10 Ed. 3. 59.* And so if the Cause assigned be not sufficient or not true. *34 H. 6. 35.* See here 13. B. C. But on a Writ of Error or False Judgment, if the Plaintiff be Nonfuit, Judgment shall not be affirmed or disaffirmed, but a *Scire facias* shall issue to have Execution upon the Record, *20 H. 6. 18.* and see there, if the Plaintiff be

Nonfuit, he shall not assign Errors on the same Writ of False Judgment, but (as it seems) is put to a new Writ. Yet *quære*; for the Record is here, and not in the inferior Court. See *21 H. 6. 34.* in the Case of the Abbot of *Taverstock.* If the Plaintiff in a Writ of False Judgment be nonsuited, and the Defendant sues a *Scire facias* to have Execution, &c. (1.) The Plaintiff may have a new Writ of False Judgment, &c. *quod coram vobis residet.* (2.) On the *Scire facias* to have Execution, he may assign his Errors without any new *Scire facias*; because both Parties have Day in Court. (3.) It seems, that if the Plaintiff had appeared on the Writ of False Judgment before, now his assigning of Errors shall not delay the Defendant of his Execution. In Error, if the Plaintiff be nonsuited before *Scire facias*, whereupon the other sues a *Scire facias quare Executionem non, &c.* he may assign Errors on the same *Scire facias.* But if he had sued a *Scire facias ad audiend' Errores*, and afterwards became Nonfuit, there, on the *Scire facias* by the other, he shall have Execution, and shall not be driven to answer to the Errors. *Quære*, and see the Book at large; for the Case seems to be misput.

- I In False Judgment upon a Writ of Right Patent, or a Writ of *Droit Close*, the Plaintiff shall not assign Errors before the Records certified, as well (a) the Original as the Residue of the Record. And the Writ of False Judgment lieth against a Stranger to the Judgment, if he be Tenant of the Land, without naming him who was Tenant, and Party to the Judgment. Otherwise it is of a Writ of Error, for there he ought to name him who was Party to the Judgment, be he Tenant or not (b).
- A And where the Tenant loseth his Land by False Judgment in a Writ of Right in a Court Baron, he shall not have a Writ of False Judgment before that the Demandant hath entered upon him, &c. *Quod vide M. 38 Ed. 3. 15. Vide 8 Ed. 4. 19.*
- B And where the Defendant in *Faux Judgment*, after Appearance by him, maketh Default, a Grand Distress shall issue out against him. And if he again make Default, or cometh and will not save his Default, the Plaintiff in the Writ of False Judgment shall have Judgment to recover Seisin of the Land against him: *Quod vide M. 13 Ed. 2.* And the Writ of False Judgment given in Ancient Demesne is such:
- C *The King to the Sheriff, greeting: If A. shall make you secure, &c. go to the Court B. &c. and cause to be recorded the Plaint, which is in the same Court by our little Writ of Right, between A. Demandant, &c. And have there the Names of the aforesaid four Men, this Writ and the other Writ, &c.*
- D And in a Writ of *Droit Close*, if the Writ of the (c) Demandant be abated, whereupon he bringeth his Writ of False Judgment in the Common Pleas, and there the Judgment is reversed, and the Writ awarded good; then he shall hold Plea in the Common Pleas, and a Judicial Writ shall issue from the Common Pleas, in Nature of Protestation made in the first Writ; and if the Protestation were in the Nature of Assise of *Mortdauncester*, the Justices shall direct a Writ unto the Sheriff to summon the Jurors to come out of Ancient Demesne thither, and all the Matter shall be tried and determined in the Common Pleas: And although the Judgment be given of the Land in the Common Pleas, yet the Land shall be Ancient Demesne. *Quod vide M. 3 Ed. 3. 34 Aff. 40.* In Hill. 6 W. 3. B. R. int' Philips and Bury, it was held by Holt accordant, and the Opinion of Dyer 373. denied, because not warranted by 34 Aff. 40.

(a) See 31 Ed. 3. F. False Judgment 10. If Judgment be given in a Court Baron without an Original, and the Tenant is ousted, it is a Distress. See 19 Ed. 2. False Judgment 19. accordant. Note; A Copyholder shall be relieved by Petition to the Lord. Mich. 8, 9 Eliz. Rot. 136. vide ante.

(b) Or his Heir, &c. *Quære* if he dies without Heir. 9 H. 6. 46 and 49. But if another than the Heir be Tenant, it is the safer Course to have a *Scire facias* against him, especially before that the Court proceeds to the Examination of the Errors. So *quacunqve via*, there ought to be a *Scire facias* against him, either before

the Errors examined or after, for otherwise if he be ousted, he shall have an Assise. *Dyer 321.*

(c) And so it seems, whether the Judgment be affirmed or disaffirmed, Execution shall be awarded in the King's Court. 39 H. 6. 5. a. And so on a Nonsuit, where a Writ of False Judgment is brought before Execution sued. 12 H. 4. 23. pl. 5. Yet see *Dyer 373.* If the Demandant brings a False Judgment, and it be reversed, he shall only be restored to his Action.

Note, That of a Judgment given in Ancient Demesne of Lands at Common Law, a Writ of False Judgment does not lie, because it is *coram non iudice.* 7 H. 4. 28. b.

Writ of False Judgment.

And upon the Writ of *Faux Judgment*, which is an *Accedas ad Curiam*, if E the Sheriff return that the Writ came so late, that he could not execute the same; then he shall have a *Sicut alias* directed unto the same Sheriff: And if he return not that at the Day, then he shall have a *Pluries* out of the same Sheriff. And he may have these Writs of *Alias* and *Pluries* out of the Common Pleas, where the first Writ was returned *tarde*, if he will, or he may have them out of the Chancery, &c. See for this Matter in the Book of * *Entries*, fol. * See 29 H. 6. Fitz. Return 114 and 115. And upon the *Accedas ad Curiam*, if the Sheriff return, that deViscount 21. he will go unto the said Court, &c. and there pray the Lord to hold his 6 H. 7. 15, 16. Court, that he may do Execution of the Writ, and that the Lord refuseth to hold his Court, &c. by reason whereof he cannot do Execution of the Writ; then a *Distringas* shall issue out of the Common Pleas directed to the Sheriff, to distrain the Lord, so that he distrain him to hold his Court at a certain Day appointed by the Sheriff; And that the Sheriff having taken with him four discreet Knights, &c. of the County, &c. he go to the Court, &c. and that he make known here in fifteen Days of Easter, &c. and that he then have that Record, &c. and that he summon the aforesaid I. that he be there to hear that Record, &c. Which see in the Book of *Entries*, fol. 117, 137. b.

There is another Writ of *Faux Judgment*; when there is a Plaint in the F County of Debt or Trespafs without any Writ, then the Writ of *Faux Judgment* in the County shall be thus: *Cause to be recorded the Plaint which was in the same Court without our Writ, between, &c. of a certain Trespafs, &c. whereof the same A. complains that False Judgment hath been done unto him, &c.* And where *Faux Judgment* is given in another Court than the County, upon a Plaint, or upon a Writ, then the Writ shall be thus:

The King to the Sheriff, greeting: If A. shall make you secure, &c. then go to the Hundred of A. of B. or to the Court of A. of B. and in the full Hundred or Court cause to be recorded the Plaint which is in the same Hundred or Court by our Writ, or without our Writ, of that that the same A. keep with the aforesaid B. the Covenant made between them, of one Messuage with the Appurtenances in F. whereof he complains, &c.

And if a Baron and Feme be sued in a Court Baron by a Writ of Right, G and the Feme is received for the Default of the Husband, and plead there, and False Judgment is given against him, she and the Husband may have a Writ of False Judgment, as appeareth by the Register.

And there is another Writ there, where the Husband and Wife pray to be received in a Court Baron in a Writ of Right upon the Default of Tenant for Term of Life, and were not received; and for False Judgment given against the Tenant for Term of Life they shall have a Writ of False Judgment, &c.

There is another Writ of *Faux Judgment* in the Register for him in the Reversion, who prayeth to be received in a Court Baron in a Writ of Right upon the Default of two Tenants for Life, where he was received for the Reversion of one of the Tenants, and the Receipt was counterpleaded for the Reversion of the other Tenant, and Judgment given, &c. And there it appeareth, that one Tenant was Tenant of certain Parcel of the Land, and the other Tenant was Tenant of the other Parcel of the Land.

- I There is another Writ of *Faux Judgment* for him that hath Judgment given Ante 18 H. 32 Ed. 3. pl. 8. against him in the Court of a Lord, who hath Power to hold Pleas before his Bailiffs by the King's Charter: But it seemeth, that in that Case he shall have a Writ of *Error*, and not a Writ of *Faux Judgment*.
- K There is another Writ of *Faux Judgment* directed unto the Sheriff, viz. *Accedas ad Curiam: To our Court of Winchester, and in that full Court cause to be recorded the Plaint which was in the same Court without our Writ according to the Custom of the aforesaid City, between W. Demandant, and D. Tenant, of one Messuage in Winchester aforesaid, whereof the same W. &c. complains that*
- I *False Judgment hath been done unto him.* But upon Assise of *Fresh Force* a Writ of *False Judgment* doth not lie, but a Writ of *Error*. And if the Writ [20.] of *False Judgment* be returned before the Justices of the Common Pleas, and 1 Ed. 3. c. 5. the Defendant comes and saith and averreth, that the Record is otherwise than it is certified, the Averment shall be received, and that Issue shall be tried by 34 H. 6. 42. the Country, or by those who were present in Court when the Record was made, and by others of the Country; and if they come not, then the Inquest shall be by the Country, as appeareth by the Statute *de Anno 1 Ed. 3. cap. 5. Rastal, Faux Judgment 2.*

Writ de Executione Judicii.

A WRIT *de Executione Judicii* lieth where Judgment is given in the Court of any Lord upon a *Writ of Right Patent*, or upon a Plea of Debt or Trespas in the same Court or in the Hundred, County, Court Baron, or in any other Court of Record; and if the Sheriff or the Bailiff will not do Execution of the Judgment, then the Party shall have this Writ directed unto the Sheriff or the Bailiff in which Court the Execution ought to be; and if they will not do Execution, he shall have an *Alias* and a *Pluries*, with this Clause in the Writ of *Pluries*, *Or signify to us the Cause why, &c.* And if they do not Execution upon this Writ, or return not some reasonable Cause wherefore they delay the Execution, the Party shall have an Attachment against him who ought to have done the Execution returnable into the King's Bench, or into the Common Pleas. And if the Plea be in the Lord's Court Baron, then the Writ of Execution shall be directed unto the Bailiff

B of the Court. But if the Plea and the Judgment be given in the Sheriff's Court, as in the County Court, then the Writ shall be directed unto the Sheriff himself to do Execution, and the *Alias* and *Pluries* shall be to the same Sheriff; and if they will not do Execution of the Judgment, then an Attachment against the Sheriff shall be directed unto the Coroners, returnable as aforesaid, to answer, &c. And so if the Writ *de Executione Judicii* be directed to the Bailiffs of any Court of any Lord, or unto the Bailiffs of a Hundred, to do Execution, and at the *Alias* and *Pluries* they will do nothing, the Attachment shall be to the Sheriffs against the Bailiffs, returnable

as aforesaid, to answer, &c. And if the Judgment be in a Court of Record, then it seemeth that the Writ *de Executione Judicii* shall be directed unto the Justices of the same Court where the Judgment was given, to do Execution, and not unto the Officer of the Court. For if the Officer of the Court will not execute the Writs directed unto him, nor return them as he ought, the Judges of the Court may amerce him. The Form of the Writ is:

Henry, &c. Lancafter, greeting: *We command you, that without Delay you cause Execution to be done of the Judgment lately given in your County of a Plaint which was in the same County by our Writ of Right, between A. Demandant, and B. Tenant, of one Messuage with the Appurtenances in I. &c. Witness, &c. (a)*

(b) Writ de Error.

28 H. 6. 11. The Form of Writ of Error to the Justices of the Common Pleas is

A Writ of Error properly lieth where False Judgment is given in any Court which is a Court of Record, as in the Common Pleas, or in London, or other City, or other Place where they have Power to hold Plea by the King's Charter, or by Prescription, in any Sum in Debt or Trespass

Job. Prifot Capital. Just. & sociis suis, & non Capital. Just. tantum; for the Records there are not before him alone. But in the Exchequer the Writ is not *thesaurario & Baronibus*, but *Baronibus tantum*. 34 H. 6. 27. Error was brought the third Day from the Return, where the Judgment was the first Day, and well, because after the Judgment. 15 Ed. 4. 18. If a Record be removed out of the Exchequer into the Exchequer Chamber by Error, when Judgment is given, all shall be remanded into the Exchequer, and Execution shall be awarded there; but that is by the Statute of 31 Ed. 3. c. 12. otherwise it is of other Courts.

(a) Of Execution, &c. in a Court Baron. In Replevin the Defendant pleads, That he recovered on a Plaint in Debt thirty-eight Shillings, affirmed in the Court Baron of *I. S.* and that the same Cattle were taken by the Bailiff in the Place where, being the Fee of the said *I. S.* and delivered to the Defendant in Execution, and he was not driven to Gage Deliverance, for he claimed Property, and the Issue was, That they were not taken and delivered to him in Execution; & *alii contra* 38 Ed. 3. 3.

And a like Case was thus: *A.* brought a Writ of Right Close in Ancient Demesne against *B.* of ten Acres, and made Protestation in Nature of an Assise, and recovered; and *C.* being the Bailiff of the Court, took an Ox of *B.*'s on five Acres Parcel of the Land recovered (but in Fact those five Acres were held at Common Law by

and sold the Ox to *D.* and *B.* brought a Replevin against *C.* the Bailiff, and it was adjudged, 1. That if the whole had been so held by Fine at Common Law, it had been *coram non Judice*, and void. 2. For that Part only was Ancient Demesne, yet till Judgment reversed the Damages are leviable. 3. That he might well take the Beasts by the Execution in any Place within the Manor which is Ancient Demesne, though the Place where he took them is not Ancient Demesne. 4. That the Sale was a good Execution, &c. 7 H. 4. 28. Yet see the contrary *per Cur.*, 4 H. 6. 17. and 22 Aff. 72, *per Thorp*, in the Case of a Recovery in a Court Baron in Debt. *Ergo quere & vide optime Rot. Parl.* 21 Ed. 3. No. 21.

(b) But not the Writ Original. 24 Ed. 3. 24.

over the Sum of forty Shillings. And if False Judgment be given in *London*, or other Place which is a Court of Record, the Party grieved shall have a Writ of Error, and this Writ may be returned into the Common Pleas, or in the King's Bench, at the Pleasure of him who sueth the same.

- E And when the Record is removed by Writ of Error into the Common Pleas or King's Bench, then the Plaintiff ought to assign his Error, before he have a *Scire facias* against the Defendant *ad audiendum Errores*. And if he assign divers Things for Errors, which the Court thinketh to be no Errors, he shall not have a *Scire facias* upon this Assignment. But after Errors assigned, and a *Scire facias* awarded against the Defendant upon that Assignment, he shall not assign an Error in Fact, as to say, that the Plaintiff was dead at the Time of the Judgment, or before the Judgment, &c. But he may assign as many Errors as do appear in the Record, and it shall not be said a double Assignment. But he shall assign for Error but one Error in Fact, because this Error in Fact shall be tried by the County, and the Errors in the Record shall be tried by the Justices.

37 Aff. 17.
For Assignment of many Errors in Law.
38 H. 6. 30.
Note, That the Party assigned Error upon an Issue, and the Court saw the Original that it was not good, for it was *ex assignatione*, where it ought to be *ex divisione*, and therefore the Court *ex officio* did abate the Writ.

And upon a Writ of Error the Record itself (a) shall be removed, and not the Transcript of the Record; for upon a Transcript of a Record a Man shall not assign Errors, if it be not upon a Writ of Error sued upon Transcript of a Fine, there he shall assign Errors (b) upon the Transcript of the Note of the Fine; and if the Justices do conceive it Error, then they shall send for the Note of the Fine, and shall reverse the same. *Vide post.* 72. D.

In

(a) *Ibid.* And a *Scire facias* lies on such a Transcript; also it seems, that Judgment shall be given before they remand it, to prevent Loss of the King's Fine. *Lib. Intr.* 296. m. 16 *Ed.* 3. See 21 *Ed.* 3. *contr.* See also 22 *Ed.* 3. 6. the Reason, *viz.* Because that which is sent into *B. R.* shall not be remanded, and therefore a Writ was sent to the Treasurer and Chamberlains (of the Exchequer) to send the Fine extracted out of the Files on a Judgment reversed. See 1 *Mar.* *Dyer* 89. *Varney's Case*; for there is no Chirographer there, if the Fine be affirmed. See 10 *Eliz.* *Dyer* 274. pl. 44.

See a Fine itself removed out of *Oxford*, 50 *Aff.* 9. The Plaintiff had Judgment, and the Defendant brought Error and removed the Record, the which he let lie, without suing a *Scire facias*; the Plaintiff prayed Execution, and had a *Scire facias*, and upon two *Nibils* returned Execution was awarded, and at the Exigent the Defendant comes and prays a *Scire facias*, and had it, for that he was not named, for *Exactus fuit* is upon the *Scire facias* to have Execution, and not on the Writ of Error. 3 *H.* 6. 13.

Note; If two Defendants bring several Writs of Error, and several *Scire facias's*, yet they

may assign and continue the Errors in Common. 11 *Ed.* 4. 92. adjudged. But if there be a Variance between the Record and the Writ, there, although a Transcript of the Record be sent into *B. R.* and a *Mittitur* into the Rolls of *C. B.* yet the Record remains in *C. B.* and there shall be Execution granted, as if a Writ of Error be to send the Record of a Recovery by *A.* against *B.* and the Record of a Recovery by *A.* against *C.* is sent, this is without Warrant, and the Record still remains in *C. B.* 9 *H.* 6. 4. See 24 *Ed.* 3. 24, 43.

Note; Baron and Feme acknowledge a Deed, which is after inrolled; the Baron dies, and the Feme brings Error to reverse the Deed, for that it was inrolled by her being a Feme Covert. and for that the Court could not examine her without a Writ; and it was admitted to be good. 21 *Ed.* 3. 43.

(b) *Of assigning and examining Errors.*

In *Re-diffessin* the Defendant is outlawed and taken, and then brings Error of the principal Judgment and of the Outlawry, and assigns Error in the Principal, and it was held, 1. That the Outlawry shall not be reversed, without making the Plaintiff a Party by *Scire facias*, for the Defendant is in Execution for him.

7 *El.*

In a Writ of Error, when the Record cometh in Court, if the Plaintiff all G
that Term do not assign his Errors; and although that he do assign his Er-
rors, if he do not sue a *Scire facias ad audiendum Errores* against the Defen-
dant, returnable the same Term, or the next Term; all the Matter is dis-
continued, and the next Term he ought to sue a new Writ (a) of Error
out of the Chancery, upon that Record directed to the Justices before whom
the Record is removed, to proceed upon the Record *quæ coram vobis re-
sidet*.

The

7 H. 4. 40. 2. That he might well have a Writ of Error to reverse both the principal Judgment and the Outlawry. 11 H. 4. 66. and may assign Error in the Principal, before he resorts to the Outlawry; for by reversing the Principal he reverses the Outlawry. 11 H. 4. 6. 8 H. 7. 10. 7 H. 6. 44. *contra* 7 H. 4. 40. 3. He may sue to reverse the Outlawry without finding Sureties for the Damages here. For by defeating the Outlawry the Imprisonment is gone. 7 H. 4. 40. 4. If the Party pleads a Release of the Right to the Land, he shall be disabled to reverse the Principal, and yet he may assign Error in the Principal, as in the Original, or in the Judgment, and thereby reverse the Outlawry, although there be no Error in that Process. 11 H. 4. 6. adjudged.

See 18 H. 6. 18. The Defendant in an Af-
fize was taken by a *Capias pro Fine*, and sued a Writ of Error, and found Sureties to sue with Effect, and to pay the Fine to the King, and to satisfy the Party, if Judgment was affirmed, and all this was in Chancery; and thereupon he had a Writ to the Justices to deliver him, and to send the Record into B. R. and it was so done, and there he assigned Errors which were no Errors, whereby no *Scire facias* issued, and it was moved that a new *Capias pro Fine* should issue, for that the Party had Interest in the Execution, so that on the said Sureties found in Chancery, he ought not to be dismissed, and therefore the Dismissal was erroneous, for he ought to have had a *Habeas Corpus*, and removed his Body, and thereon to have found Sureties to satisfy the Party, or to render his Body to Prison again, if Judgment were affirmed.

(a) Note; If Matter of Fact be assigned for Error, as that the Party's Attorney was Judge, &c. if the other pleads *in nullo est erratum*, and confesses the Matter of Fact, and puts it in Judgment of the Court. *Si Error, &c.* as 3 Ed. 6. *Dyer* 65. He may demur thereto, and see *Dyer* 104. a Demurrer on the Errors assigned,

And Note; The Defendant may assign for Error, that his Attorney had no Warrant, although he acted for his Advantage. 7 H. 4. 16. 11 H. 4. 44. & 38.

(a) See Error on a Judgment in Chancery on a *Scire facias*, upon a Recognizance there, and reversed in B. R. 14 Eliz. *Dyer* 315. And see Error in Chancery on a Judgment given in Chancery. 42 Aff. 22.

Note; In Darrein Presentment the Parties demur, and adjudged against the Defendant, for that he had brought a Writ of Error before the Damages were taxed; for the Assise in such Case is to inquire into the Point of Damages, and yet it was adjudged, that a Writ of Error lies, for that Judgment is rendered upon the Principal, (*i. e.* the Right of Presentation.)

So where Damages are to be taxed in a Writ of Ayel. 17 Ed. 3. 5, 21. 23 Aff. 8.

Note; Such Court as may hold Plea above forty Shillings, is a Court of Record, and yet may be by Prescription. 9 H. 7. 11. 45 Ed. 3. 2. a. 18 H. 6. *Prescription* 45. *per Cas.* 19 H. 6. 79, 80. Where one prescribes to hold Plea by Plaintiff in his Court of all Debts. 4 Ed. 3. 36. He that has Conuance of Pleas, has a Court of Record. 9 H. 6. 58, 59.

Note; If the Plaintiff be Nonfuit, &c. the Court ought not to examine the Errors. 21 Ed. 4. 44. But if the Defendant pleads in Bar of Error, &c. as by Release, &c. yet if it be found against the Defendant, they shall examine the Errors. 21 Ed. 3. 54. b. 8 Ed. 4. 8. And if it be found for him, the Judgment shall not be affirmed or reversed, but the Plaintiff shall be barred. 9 H. 6. 48, 49. a.

Note; An Infant brought Error of a Fine levied by him to A. for Life, Remainder to B. he cannot reverse it without warning B. 21 Ed. 3. 56. a. Also, where A. recovered against B. and enfeoffed C. and died, B. brought Error, and it was held, 1st, That the Judgment shall not be reversed without making the Heir of A. a Party by Garnishment, either as to the Land

The Form to assign Errors is to put a Bill into the Court, and to say in the Bill, *in hoc erratum est, &c.* and to shew in certain in what Things; and *in hoc erratum est*, and shew in certain another Thing; and so of the rest in which he will assign the Errors. But to say, *in omnibus erratum est*, is not good, because of the Incertainty.

- A And in a Writ of Error he ought to assign his Error in proper Person, and not by Attorney, where he is in Execution by Force of the Judgment.
- B And in a Writ of Error upon Judgment given in the Common Pleas, the Plaintiff cannot assign for Error, that the Justices of the Common Pleas did not give that Judgment, but the Clerks of their own Heads; neither can he assign for Error, that the Jurors gave their Verdict for the Defendant, and that the Justices entered it for the Plaintiff, and gave Judgment for him, because that this Assignment is contrary to that which the Court doth as Judges, &c.
- C And if a Man be vouched, and entereth into Warranty, and loseth, he may have a Writ of Error, and assign the (a) Errors which happened betwixt the Demandant and the Tenant, or betwixt the Demandant and the Vouchee. And so he in the Reversion who prayeth to be received upon the Default of the Tenant for Life, or for his faint Pleading, if he be received, and pleadeth, and loseth, he shall have a Writ of Error, and assign the Error betwixt the Demandant and (b) the Tenant, or between the Demandant and him who prayeth to be received. And if Tenant for Life loseth by Default, he in the Reversion shall have a Writ of Error, although he were not received, nor prayed to be received, and shall assign for Error the Matter which was betwixt the Demandant and the Tenant who lost by Default.

35 H. 6. 12.
If the Writ of Error hath longer Day of Return than it ought to have, the Justices of the Common Pleas may shorten the Day.
5 H. 7. 3.
8 H. 7. 10.
7 H. 7. 4.
21 H. 6. 43.
[21.]
3 Co. 40.
50 Ed. 3. Aff.
The Reversion was granted to one pendant the Writ against the Lessee for Life; or if the Tenant in Fee pray in Aid of a Stranger, *quare*; for in these Cases he in the Reversion shall have

Error. 50 Ed. 3. 5. But *quare*, if the Judgment shall be reversed, and that Execution shall be awarded, or shall cease during the Life of the Husband.

or the Persons. 2dly, That he might have a *Scire facias* against the Heir and Tertenants in the same Writ without naming the Tertenants Names; or, 3dly, He might have a *Scire facias* against the Heir *ad audiend' Errores*, and afterwards a *Scire facias* against the Tertenants, to have Execution. 8 H. 4. 17, &c. Or if he has no Heir, a *Scire facias* lies against the Tertenants. See 8 H. 6. 35. b. A. being Guardian of B. recovers in a *Quare impedit*, and dies, the Defendant brings Error, and after a *Scire facias* by C. the Heir of A. against B. and the Incumbent, not naming A.'s Executor, yet adjudged good: For A. was Guardian by reason of the Seignory. See a *Scire facias* against a Defendant in the same Writ of Error. 34 Aff. 7 or 17. 8 H. 6. 35. b.

(a) Note; He who is only Tenant in Law

may have Error, as if the Tenant aliens pending the Writ, and afterwards Judgment is given against him. 21 Ed. 3. 53, 54. F. Error 4. 12 Aff. 41. He may bring Error, and if he reverses the Judgment, the Feeoffee may enter upon him.

So he in Reversion or Remainder on an Estate Tail may assign, &c. *Dyer* 188. And thereupon the Tenant shall be restored. 8 H. 4. 5.

See 4 *Eliz. Dyer* 241. 21 H. 6. 29. 15 Ed. 3. 1. Error 72. 32 Ed. 3. Error 73. *Post*. 108. A.

(b) Note also; The Vouchee may assign Error between the Demandant and Tenant, and so of Tenant *per Rescit*. 8 H. 4. 5. 8 H. 4. 3. But the Tenant (himself) shall not have Error, because he is out of Court. *Quere*, 17 Ed. 2. *Recovery in Value* 32.

A Man shall assign an Error in Law, as the Case is: As if the Husband and Wife levy a Fine of the Lands of the Wife unto a Stranger, the Wife being within Age, they shall have a Writ of Error during the Nonage of the Wife, and shall assign that for Error, and that is an Error in Law of the Court.

Also in a Writ of *Entrie sur Disseisin*, if the original Writ want these Words in the Writ, (*a*) *Which he claims to be his Right and Inheritance*, if the Tenant admit of the Writ, and plead to the Action, and loseth, he shall not assign this Fault in the Writ, because he hath admitted the Writ to be good by his Plea. And so in a Writ of *Detinue of Charters* concerning (*b*) certain Lands, if the Bailiff in his Count do not declare the Certainty of the Land in the Count, and the Defendant do admit the Count good, and pleadeth unto the Writ, he shall loseth by Judgment given in a Writ of Error sued by him; and shall not assign for Error the Fault in the Count; because he hath admitted the Count to be good by his Plea. *Tamen querere.*

Tenancy, Misnomer, taking of Husband pendant the Writ, and the like, which prove the Writ abatable; there if the Party plead other Matter, and admit the Writ, he shall not have Error: *Contra* of Death or other Thing, which prove the Writ abated.

(*c*) And a Man shall not assign for Error a Thing which is for his Advantage: As to say and assign for Error that he had Day, and that the Day was for longer Time than the common Day; and so he shall not assign for Error that he was not effoined, where he ought not to be effoined, or had Aid granted unto him, where he ought not to have had Aid; because these Things are for his Advantage. *Post. 22. D.*

(*d*) If False Judgment be given before the Justices of the Bishop of *Durham* in the County Palatine, the Party grieved shall have a Writ of Error there before the same Bishop. *M. 14 Ed. 3.* And if he give False Judgment

(*a*) See 21 *Ed. 3.* 54. *F. Error 4.* If an Avowry be quashable, for that it is returned by the Bailiff of the Franchise, where it should be recited by the Sheriff, or if the Writ be abatable and not challenged; this shall not be assigned for Error; *contra*, if it be abatable *per Officium Curie.* 3 *H. 4.* 7.

(*c*) See a Judgment on an Indictment of Conspiracy, where the Defendant had pleaded Not guilty, reversed, for that the Place where, and the Day of Conspiracy, were not shewn. 24 *Ed. 3.* 75.

(*e*) An Attorney appears for one without Warrant; it is Error. 7 *H. 4.* 16. At the Grand Cape one appears as Attorney for the Tenant, and wages his Law of Non-tummons, and at the Day makes Default, the Tenant brings Error, and assigns that the Attorney had no War-

rant; and by the better Opinion Judgment was reversed. For the Continuance was taken without the Party, and the Judgment could not be good on the second Default; for it is but a Judgment by Default, &c. and there ought to have been two Defaults recorded against the Tenant. See 8 *H. 5.* 2. 14 *Ed. 3.* *Error 6.* 19 *H. 6.* 12.

(*d*) See the Form of a Reversal of a Judgment in *Chester.* *Lib. Intr.* 250. *a. b. Reg.* 17. 6 *H. 4.* 9. 34 *H. 6.* 42. *b. Dyer* 320, 321 and 345. Note; Error lies not on a Judgment reversed in the Cinque Ports, but *coram Custode quinque Portuum.* See *Dyer* 376. Also a Judgment in *Durham* shall not be reversed in *C. B.* but in *B. R. Pafe.* 29 *El. 3.* *Hughes's Abr.* 207. *Morton's Cafe.* See 14 *Ed. 3.* *F. Error 6.* and 8 *Eliz. Dyer* 250.

ment,

ment, then the Writ of Error shall be sued in the Common Pleas, or in the King's Bench. 22 Ed. 3. 3. 23 Ed. 3. 22. 2 R. 3. 2. 7 H. 6. 28.

before Justices,
Errors there
shall be rever-

fed in B. R. if there be Justices there; but by Fortescue it shall be reversed in Parliament. 19 H. 6. 12. Error in County Palatine shall be reversed in B. R. 21 H. 7. 33. *per* Fineux, Erroneous Judgment in County Palatine shall be reversed there by Commission. 37 H. 6. 13. Error in Chancery reversed in Parliament. But see 14 Eliz. Dyer 315. That Error upon a Scire facias upon a Recognizance was reversed in B. R. which seemeth contrary to 37 H. 6. 13.

H And if a False Judgment be given for the King in any Suit or Action, the (a) Party grieved shall have a Writ of Error, and assign his Errors, without suing forth any Scire facias against the King *ad audiendum Errores*, because that the King is always present in Court; and that is the Cause of the Form of Entries of Suits for the King is such: Christopher Hales, *Attorney of the Lord the King, who prosecutes for the Lord the King, &c. comes here into Court, &c.* and not, *The Lord the King by C. H. his Attorney, comes here into Court*, because that the King is always present in Court.

7 H. 4. 37.
1 H. 7. 13.
2 R. 3. 2.
25 Ed. 4. 7.

1 H. 7. 13.
It is said, if
any be to re-

verse Outlawry in Felony, when he cometh in upon the Indictment, he shall assign his Error before he prosecuteth his Writ of Error.

I (b) Error in the King's Bench in the Process, where it is the Default of the Clerks, shall be reversed in the same Court by a Writ of Error sued by the Party before the same Justices: But not without suing of a Writ of Error, although it be the same Term. But in the Common Pleas, after Judgment given the same Term the Justices may reverse their own Judgment upon Error in the Process, or for Default of the Clerks, without any Writ of Error sued forth; but in another Term the Party ought to sue forth a Writ of Error thereupon returnable into the King's Bench. But of an Error in Law

Vide 4 Ed. 4. 41. 24 Ed. 3. 34. 7 H. 6. 28. Hidebrad's Cafe. 19 H. 6. 2. 15 Ed. 4. 78. 37 H. 6. 17. *per* three Justices. If a Man be utlage notwithstanding a Superfedeas, and appear and plead in the Common Pleas, the Utlary shall be reversed in the same Place, although it be in another Term; but *contra*, if it be in another Term, but Defendant doth not appear and plead.

H which

(a) Note; He ought first to sue by Petition to the King. See where a Writ went to the Justices to examine the Errors, *hoc non obstante*. 24 Ed. 3. 35, 36. Hill 29 Eliz. 3. Hughes 308.

(b) See the Form of a Writ of Error in Parliament, Dyer 375.

As if before the *quintus Exactus* the Party appears, and has a *Superfedeas* of Record, be it in Term or in the Vacation, though it is not shewn to the Sheriff at the Day of the Exigent or *Capias utlagatum*, he may avoid the Outlawry the same Term in C. B. *contra* in B. R. See 4 H. 4. 1. a. b. 4 Ed. 4. 42. 10 H. 7. 16. 9 H. 6. 12. 44. a. b. And if he comes in at the Return of the Exigent, he may reverse it in B. R. without a Writ of Error; *per Westbury*: And see there if Judgment be given; where

there is a Default in awarding the Process, or in the Return, it is ill. For there the *Tales* was returned without being awarded, and on a Writ of Error brought, three Points were agreed, *viz.* 1. That though on an erroneous Judgment given on an *Original* in B. R. Error does not lie there, except for Error in Process by Default of the Clerk, or in the Return by Default of the Sheriff: Yet there, *i. e.* in C. B. a Writ of Error shall be granted for Error, either in the Record, or in the Process, or in *Redditioe Judicii*. 2. That in the same Term the Roll is not recorded, but is only in the Breaf or Remembrance of the Judges, and therefore in the same Term they may amend by the Common Law, even after Judgment; yea, though a Writ of Error be brought. (See *Tatchin's Case*, 6 Mod.)

And

which is the Default of the Justices, the same Court cannot reverse the Judgment by a Writ of Error, nor without a Writ of Error, but this Error ought to be redressed in another Court before other Justices by a Writ of Error.

And he which confesseth the Demandant's Action shall have a Writ of Error to reverse that Judgment, against his Confession upon erroneous Judgment given.

Yet note;
9 H. 7. 24. is
that the Heir
at the Com-
mon Law shall
have it.
3 H. 4. 19.
the Daught.
to the Tail
brought Er-
ror, altho' a
Son were Heir
at Common
Law. Vide
1 Ma. Dyer
89, 90.
20 Ed. 3.
Fitz. Error 2.
11 H. 4. 65.

In Plea of Land against the Tenant, and the Tenant dieth, he (a) who is L
Heir of the Tenant to that Land shall have a Writ of Error, and not he who
is his Heir at the Common Law: As in *Borough-English*, if the Tenant lose
the Land by erroneous Judgment, the youngest Son shall have the Writ of
Error. (b) And so he which is Heir unto the Special Tail shall have the M
Writ of Error, if the Land be lost by erroneous Judgment: The Tenant
may have one Writ of Error, and the Vouchee another Writ of Error upon
the same Judgment; and so the Tenant, and the Vouchee by Resceit, and
all depending at one Time. And an Executor or Administrator shall have a N
Writ of Error upon a Judgment given against the Testator for Debt or Da-
mages. And so the Heir shall have a Writ of Error to reverse an (c) Out-
lawry of Felony pronounced against his Father, to restore the Blood betwixt
him and the Father. And if a Man plead in any Action, and the Justices
will not allow thereof, and the Party makes his Bill upon it, and prayeth,
that the Justices will seal this Bill of his (d) Exceptions or Plea; and if they
do

And in *C. B.* where, in the principal Case, a
Tales was in Fact awarded, but not entered on
the Roll, it was amended after a Writ of Error
brought, it being in the same Term. 7 H. 6. 28.
See 2 R. 3. 21. and 8 H. 6. 37.

See *Dyer* 195. An Outlawry after Judgment
reversed, because although a *Capias* lay on the
Writ, yet the Process for it was not till after the
Judgment discontinued. And *Note*; If a Plea
be discontinued, and the Plaintiff be afterwards
Nonsuit, yet he shall have Error or False Judg-
ment, as his Case is. 22 Ed. 3. 2. a.

(a) See accordingly 3 H. 4. 19. And that
the Writ shall be brought generally as Heir,
and that on Exception taken thereto, that he is
not Heir, he shall shew the special Matter. See
9 H. 7. 24. *contra*, viz. *A.* and *B.* his Wife,
are Tenants in Tail Special, and to their Heirs;
they have Issue *C.* *A.* dies, *B.* and *C.* levy a
Fine, *C.* dies without Issue, *D.* as Heir to *C.*
brings Error, &c. 1. For that it does not ap-
pear that *C.* was Heir to the Wife, &c. 2.
That he ought to make him Heir to *A.* for he
may be only of the Half-Blood to *C.* And see
Verna's Case in *Dyer* 89. In a Suit brought as
Consin and Heir, he shews how he is Heir.

(b) See 8 H. 4. 3. accordant; and if Judg-
ment be reversed against the one, it shall be re-

versed against both. See 2 H. 7. 10. and *supra*
the Notes *Fol.* 21. C.

(c) But he ought to sue a *Scire facias*, that
the Lord may seize for the Escheat. 8 H. 6. 2.
pl. 9. *ult. Lib. Intr.* 308. b.

Note; Error in the principal Judgment shall
reverse the Accessary, and *è contra*. If a Judg-
ment be of Record against a Parson in Annuity,
in a *Scire facias* against the Successor, he shall
not plead in Bar of Execution, that the Judg-
ment was erroneous, and if he does so, Execu-
tion shall be awarded; and if he after brings
Error on the Judgment, if on the *Scire facias* he
assigns Error in the principal Judgment; this is
not good, although the whole Record of the
Judgment be recited in the *Scire facias*; and
therefore if the Judgment be affirmed on the
Scire facias, yet he may have Error on the
Principal, and thereby reverse the Judgment on
the *Scire facias*, and he shall be restored to all
that he lost on the *Scire facias*: Adjudged 11 H.
4. 47. See 9 H. 6. 13. accordant.

(d) See 11 H. 4. 52. *per Hulf.* the Bill of
Exceptions is no Part of the Record, before
that it be acknowledged, (*i. e.* entered, &c.)
And 11 H. 4. 65. By good Opinion, one of
the Justices may deliver the Bill into Court
without a *Scire facias*; yet in that Case a *Scire*
facias

do not according as is contained in the Statute of *West. 2. cap. 3.* the Party [22.] grieved shall have a Writ of Error, and may assign Error upon that Bill so sealed, and also in the Record, or in one of them, at his Pleasure: But this Bill ought to be sealed by the Justices before Judgment given by them, and not after, as it appeareth *An. 11 H. 4. 52, 65, 92.*

- A The Successor of an Abbot, Prior or Parson, or such Bodies Corporate, shall have a Writ of Error of a Judgment given against their Predecessor; of all Things which touch the Succession or Corporation. But if a Man recover against a Parson or a Bishop, Debt or Damages by Judgment or Action Personal, their Executors shall have the Writ of Error upon that Judgment, and not their Successors, because that Matter doth not concern the Corporation. *Vide 3 H. 3. the last Case. Vide devant 21. L. M. N. 16 Ed. 3. Error 69. 12 H. 8. 8. ante M.*
- B If a Man sue forth Execution erroneously against the Recognizor upon a Recognizance, the Feoffee of the Recognizor shall have a Writ of Error. *18 Ed. 3. 25. 17 Aff. 24. Error 71. yet the Lord by Escheat shall not have Error. 15 Aff. 8. and so 9 Ed. 4. 14. that a Stranger shall not have Error. 6 Ed. 3. 7. Fitz Error 78. 21 H. 7. 13. 5 Ed. 2. Error 89. no Error shall be brought here but upon Default of Justice of the King's Bench in Ireland.*
- (a) If a Man purchase his Pardon of an Outlawry, yet he may have a Writ of Error to reverse the Outlawry. *H. 18 Ed. 3.* (b) But if a Man do disclaim in a *Præcipe quod reddat* of Land, and the Demandant doth recover, the Tenant shall not have a Writ of Error against his own Disclaimer: But if he plead *Non-tenure*, and the same be found against him, for which the Demandant recovereth, the Tenant shall have a Writ of Error. *H. 6 Ed. 3.* A Man condemned shall not assign Error in the Process; but in the original Writ he may.
- D It is no Error to suffer one to make Attorney in an Action in which he ought not to make any Attorney. *7 H. 6. 21.*
- E (c) Upon False Judgment given in the Common Pleas in *Ireland* the Writ of Error ought to be sued there; and returnable in the King's Bench in *Ireland*; but upon a Judgment given in the King's Bench in *Ireland*, the Writ of Error shall be sued and returned in the King's Bench in *England*.

Bench in Ireland. And note that it is said, that there is no Original here, but the same remains is 37 Aff. 5. Fitz. Aff. 328.

facias issued, and the Justices came and acknowledged their Seals; and it was held, that this Acknowledgment of the Justices might be made long Time after the Writ of Error brought, and after the *Scire facias* awarded, and that no new *Scire facias* shall issue; for it is now become Parcel of the Record *ab initio*, as in the Case of Diminution alledged after a *Scire facias*. The Defendant shall not alledge Diminution in the Bill of Exceptions, but ought to have shewn his Case when the Justices came to set their Seals. See 1 H. 4. 92.

See also 11 H. 4. 67. and Note, 11 H. 4. 92. *per Gascoign, and Hul.* it was held clearly, that the Bill may be sealed after the Record removed by Writ of Error.

(a) *Post. 104. G.* See 24 Ed. 3. 42, 43. accordant. But he shall not be restored to his Chattels against the King; and Note, the Error there was a Discontinuance of the Process. See 3 H. 4. 10. accordant. Yet it cannot be alledged at the *Scire facias*, without the Charter (or Writ) returned, and the Plaintiff has counted. *Vide post. 104. G.*

(b) See 3 H. 4. 20. 19 Ed. 3. Error 75. 6 Ed. 3. 7. 36 Ed. 3. Error 6 and 82.

(c) Of Errors to reverse Judgment in *Ireland*, see *Shorver's Parliament Cases.*

And to reverse a Judgment of Reversal given in the King's Bench in *Ireland*, see 34 Aff. 7.

(a) When the Record cometh into Court by a Writ of Error, the Plaintiff shall assign his Error, and shall have a *Scire facias* before the Record shall be entered; for the same shall not be entered before the Parties have Day by the *Scire facias*.

And the Procefs in this Writ is *Alias* and *Pluries*, and upon that Attachment shall be awarded against the Judge, who ought to return the Record to whom the Writ was directed: And the *Pluries* may be returned into the Common Pleas, or into the (b) Chancery, if the *Pluries* issueth to the Justices of the Common Pleas to remove the Record; and if the Writ issueth to another base Court, the *Pluries* ought to be returned into the Chancery, or into the same Court where it is made returnable. And if it be returned into the Chancery with the Record, the Chancellor himself with his own Hands may put the Record into the Common Pleas without any Writ of *Mittimus* thereunto, and that as well as if he had sent a *Mittimus* with the Record (c).

Error

(a) Here *Note*; If the Record be removed for Error, but the Party does not assign his Errors, he who recovers may have a *Scire facias* for Execution; and if he has Execution awarded by Default, yet the other may come and assign Errors in the Parliament, and then have a *Scire facias ad audiend' Errores*. 9 H. 6. 13. See accordant 17 Ed. 3. 21.

Note; A *Scire facias ad audiend' Errores* shall issue against the Tertenant and Heir of him who is Party to the Record; but the Heir is Plaintiff, and by his Death the *Scire facias* shall abate. *Note*; The Plaintiff may elect a *Scire facias* against the Heir only, and after Reversal to him take another *Scire facias* against the Tertenant *ad audiend' Errores*, or he may take it against both together. 47 Aff. 4.

(b) The Chancellor may send the Record into C. B. 17 Ed. 3. 21. 5 H. 5. 1. in a *Certiorari*. See 9 H. 6. 4. that Part of a Record may be delivered to the Justices of B. R. by the Chief Justice without a Writ, when the other Part was delivered by Writ.

(c) What Record shall be removed by Writ of Error?

Note; If Judgment be given in a Franchise, or inferior Court by Writ of Error, the Original shall be removed; but if it be given in C. B. the Original shall not be removed without a special Writ (for its Removal). 34 Aff. 7. Yet see an Original not removed in case of Error brought on a Judgment in Oxon. in a Writ of Right, for that if the Judgment were reversed, the Party might proceed on the same Original in Oxon. or he might pray a Writ to remove the Original into B. R. and so proceed thereon in B. R.

37 Aff. 5. 17. Fol. 22. See *Danvers's General Abr.* Tit. *Error*.

Where a Writ of Error shall be a *Superfedeas*, &c. If the Party be in Custody on a *Capias ad computandum*, he shall not be taken out of it by a Writ of Error. 21 H. 6. 26.

Note; 1. If after Judgment Execution be awarded, and Error brought, and then the Party is taken, he is well taken, for a *Superfedeas* ought to have issued (upon the Writ of Error) out of C. B. directed to the Sheriff; for the Writ of Error is no *Superfedeas* as to the Sheriff, but if the Party removes the Record, he may find Sureties, and have a *Superfedeas* (directed to the Sheriff) out of B. R. 20 H. 6. 4. 7 H. 6. 42, 44.

But *Note*; If no Execution be awarded; 1. The Writ of Error is a *Superfedeas* to the Award of Execution; but if the Party be Nonsuit, and brings another Writ of Error, this is no *Superfedeas* to the Award of Execution, nor shall any *Superfedeas* be directed to the Sheriff on this second Writ; and yet if he sends the Record into the King's Bench on this second Writ, he shall have a *Superfedeas* there on Sureties found. 20 H. 6. 4. 19 H. 6. 8. But if the Writ of Error be discontinued by the not coming of the Justices, &c. the second Writ is superseded. 6 H. 7. 16. But if a Judgment be given in a *Quare impedit*, and the Party sues out of (or on) the Rolls a *Quare non admittit*, and pending this the other brings a Writ of Error, the Record shall be sent notwithstanding this Writ; and when the Record is sent, the *Quare non admittit* being a Judicial Writ, and all the Proceedings thereon are determined; for by Reversal of

the

Error in London.

NOTE, that if any erroneous Judgment be given in the Courts before the Sheriffs of *London*, the Party grieved shall have a Writ of Error out of the Chancery directed unto the Sheriffs, to bring that Record before the Mayor and Aldermen in the (a) *Hustings of London*, which *Hustings* is a Court holden before the Mayor, &c. And there the Record shall be examined: And if there be Error, they shall reverse the Record there by the Custom of the said City. And if the Sheriff, after the Record is removed before the Mayor, &c. in the *Hustings*, will award Execution upon the Record against the Party, the Party against whom the Execution is awarded shall have a special Writ out of the Chancery directed unto the Sheriffs, that they take sufficient Sureties of the Party to satisfy the King, and also the Party, of that which appertaineth unto them, if the Judgment be affirmed, and that they surcease to do Execution; and if they have taken the Party in Execution, that they deliver him out of Prison. And the Form of the Writ is such:

Nat Brev. 17.
Ante 21.
A Feme Covert was received in the Common Pleas to acknowledge a Deed inrolled, where they have not Power to examine her without a Writ, *quare* if Error; for it is not adjudged, if it be Error or not. *Quare*

the Usage at this Day. So of an Infant. 21 Ed. 3. 29. Br. Error 62. Vide 32 H. 8. That a Deed inrolled shall not be taken by the Common Law of an Infant or Feme Covert. *Contra* by the Custom of London, per 29 H. 8. 23. and 7 Ed. 4. 5. Lis.

The King to the Mayor and Sheriffs of London, greeting: It is shewn unto us on the Behalf of R. &c. that whereas according to the Custom in the City aforesaid, in Case when any Person, either Plaintiff or Defendant, complains that in a Plaint which was in our Court before the Sheriffs of the City aforesaid, any Errors have intervened, and would remove the Record and Process of those Plaints for Cause of Error intervening into the Hustings of the City aforesaid, to have those Errors corrected, the Sheriffs of the City ought to supersede the Execution of the former Judgment before them given, pending the Records and Process of those Plaints indiscussed in the Hustings; and we lately, at the Prosecution of the aforesaid R. suggesting, having been informed that manifest Error had intervened

the first Judgment, all that depends thereon is reversed; and the same Law is in a *Scire facias* to reverse a Judgment. See 26 Ed. 3. 75. and 2 H. 6. 4. See also Stat. 3 Jac. 1. c. 8.

A *Scire facias* issued upon a Fine, the Tenant made Default, and at the Day given a Writ of Error was brought on the Fine; no Judgment shall be given on the *Scire facias*, but the Plaintiff may have Debt on a Recovery, although the Record be removed by Error, either pending or before the Writ of Debt brought; for the Writ of Error is as a new Original.

On a *Devastavit* on a Judgment in Debt against Executors, a *Scire facias* issued, and on

Issue found for the Plaintiff, the Defendant had a Writ of Error on the original Recovery; yet Judgment shall be given in the *Scire facias*, that Execution shall be awarded, *sed cesset Executio* until the Record affirmed. 10 H. 6. 6. *per Cur.*

Note; This *Scire facias* is in Nature of a new Original, as if one recovers in Assise, and after brings a Re-disseisin, and afterwards Error is sued of the Judgment given in the Assise; yet the Sheriff shall go to the Judgment in the Re-disseisin, because it is in Nature of a new Original. See 9 H. 5. 13.

(a) Vide *Rot. Parl.* 8 Ed. 2. m. 17. the Case of *Job. Bonaventurae*.

in the Record and Proceſs of a Plaint which was before you the aforeſaid Sheriffs in our Court of the City aforeſaid by our Writ, between A. and the aforeſaid R. for that, that the ſaid R. &c. commanded you, that you ſhould cauſe the Record and Proceſs thereof to come before you in the Huſtings aforeſaid, to correct the Error, if any ſhould be; nevertheleſs you the Sheriffs (pending the ſaid Plaint of Error indiſcuſſed in the Huſtings aforeſaid) unjuſtly cauſe Execution of the former Judgment to be done, to the no ſmall Expence and Grievance of the ſaid R. Therefore we command you, that if it ſo be, that the ſame R. ſhall find you ſufficient Security as well to ſatisfy to us of that which belongs to us in this Behalf, as to the aforeſaid A. of the Arrearages and Damages adjudged to him in this Behalf, if the firſt Judgment ſhall happen to be affirmed, and further to do and receive that which our Court ſhall conſider in this Behalf; then ſuperſede the doing Execution of the former Judgment pending the Plaint of Error above-mentioned in the Huſtings aforeſaid. And if the ſaid R. be taken and detained in our Priſon by occaſion of that Judgment, then that you in the mean time cauſe him the ſaid R. to be delivered out of the Priſon by the Security aforeſaid, if he be detained in the ſame upon the Occaſion aforeſaid, and upon no other, that he may be able to proſecute his ſaid Plaint of Error. Witneſs, &c.

[23.]

And it appeareth by this Writ, that a Man ſhall have an Action againſt A any Perſon in London, by Original out of the Chancery directed unto the Sheriffs of London, and that they ſhall hold Plea thereof. And a Man ſhall have B the like Writ of Error upon a Judgment given in London before the Sheriffs by Plaint ſued there before them, without any Writ original ſued, &c. And the Writ of Error ſhall be directed unto the Mayor, and alſo to the Sheriffs, although that the Judgment be given in the Sheriff's Court before them, to remove the Record into the Huſtings to reverse it there, if, &c. And the Form of the Writ ſhall be thus:

The King to the Mayor and Sheriffs of London, greeting, &c. Because in the Record and Proceſs, and alſo in the giving of Judgment of the Plaint which was C in our Court of the City aforeſaid before you the aforeſaid Sheriffs without our Writ according to the Cuſtom of the ſame City, between A. and R. of a certain Treſpaſs to the ſame A. committed by the aforeſaid R. as it is ſaid, manifeſt Error hath intervened, to the great Damage of him the ſaid R. as we have received from his Complaint: We being willing that the Error be corrected in due Manner (if any ſhall be) and full and ſpeedy Juſtice done to the Party aforeſaid in this Matter, command you, that if Judgment thereof be given, then that you cauſe the Record and Proceſs of the Plaint aforeſaid to come before you in our next Huſtings of the ſame City, and the ſame to be recited and diligently examined in the Preſence of the aforeſaid Parties to be warned hereupon by you the ſaid Sheriffs to be preſent, if they will, and the Error (if any ſhall be) in this Matter to be corrected in due Manner, and full and ſpeedy Juſtice to be done thereupon to the Parties aforeſaid, as of Right and according to the Cuſtom of the City aforeſaid ought to be done. Witneſs, &c.

And the Writ of Superſedeas unto the Sheriff, to ceaſe to do Execution pending the Writ of Error, may be made and contained in the ſame Writ of Error which is directed unto the Mayor and Sheriffs to remove the Record into the Huſtings.

And

E And if erroneous Judgment be given in the Hustings in London before the Mayor and the Sheriffs there, then the Party who will sue to reverse the Judgment shall come into the Chancery, and there sue a Commission directed to Persons to examine the Record, and Process, and the Errors, and thereupon to do Right. And the Commission shall be thus:

34 H. 6. 42.
When Error
is sued upon a
Judgment be-
fore the May-
or, it shall be
at S. Martin's,
Recorder shall

and then the Mayor and Aldermen shall have forty Days to be advised of their Records, and the record the same *Ore tenus*.

(a) *The King to his beloved, &c. R. and S. greeting: We have received Information on the Behalf of B. that in the Record and Process, and in the giving of Judgment of the Plaint which was before the Mayor and Sheriffs of London in our Hustings there without our Writ, between C. and the aforesaid B. of a certain Trespass, &c. committed, as it is said, manifest Error hath intervened: We, in Defect of the same Mayor and Sheriffs, being willing that Error be in due Manner corrected (if any shall be) and that Fullness of Justice be done thereupon to the Parties, do assign you our Justices, together with those whom we have associated with you, to examine the aforesaid Record and Process, and to correct the Error (if any shall happen to be found in them, or in the giving of Judgment of the Plaint aforesaid) and to do full and speedy Justice thereupon to the Parties, according to the Custom of the City aforesaid; and therefore we command you, that at a certain Day which you shall prefix for this Purpose, you go to Saint Martin's le Grand, London, and that in Defect of the aforesaid Mayor and Sheriff you do the Things premised to be done in Form aforesaid, &c. according to the Law and Custom of our Realm, and of the City aforesaid; saving, &c. We command, &c. the same Mayor and Sheriffs, that at a certain Day whereof you shall give them Notice, they cause the Record and Process of the Plaint aforesaid, with all Things touching them, and the Parties aforesaid, to come before you at the Place aforesaid. In Testimony whereof, &c. Witness, &c.*

F And upon this Commission the Justices shall award a Precept unto the Mayor and Sheriffs, to send the Record and Process before them at a certain Day, and to warn the Parties to be before the Justices at the same Day, &c. And the King shall send another Writ unto the Mayor and Sheriffs, to have the Record and Process before the said Justices at the Day assigned by the Justices by their Precept made unto the Mayor and Sheriffs. And upon this Commission the King may make Association, and another Writ *Si non omnes* directed unto the Justices to proceed, although that some of them do not come, as he shall do in an Assise, or in *Oyer and Terminer*, &c.

G And a Man shall have a Commission to examine the Errors, and Judgment given in the Hustings in the Time of another King, and in the Time of another Mayor and other Sheriffs; and the Form of the Commission is such:

The King to his beloved, &c. Because we have received Information on the Behalf of B. that in the Record and Process, &c. (as above, until) do assign you, three or two of you, our Justices, to supervise and examine the Record and Process of the Plaint aforesaid, in the Presence of the now Mayor and Sheriffs of the City aforesaid, to be warned hereupon by you to be present, if they will, at the

(a) See the *Parliament Roll*, 22 Ed. 1. m. 9. Dorfe.

[24.] *Church of Saint Martin le Grand, London, &c.* (as in the Commission next above, until) and therefore we command you, that at a certain Day which you shall prefix for this Purpose, you go to the said Church of Saint Martin le Grand, London, and do and explain all and singular the Things premised to be done in Form aforesaid, &c. according to the Law and Custom of the City aforesaid; saving, &c. We also command the same now Mayor and Sheriffs, that at a certain Day whereof, &c. you shall give them Notice, they cause the Record and Process of the Plaint aforesaid, with all Things remaining in their Power touching the same, as it is said, to come before you, &c. at the Place aforesaid; and we command the aforesaid Sheriffs, that they give Notice to the aforesaid B. that he may be then there to hear the Error, if any be in the Record and Process aforesaid, &c. (as above in the Premises). *Witness, &c.*

And upon this Commission the King shall send another Writ unto the Mayor and Sheriffs of *London*, to send the Record and Process before the said Justices, &c. And the Writ in the Beginning thereof shall rehearse the Effect of the Record and Process, and also it shall rehearse the Commission which he hath made to be directed unto certain Justices, to examine, &c. and to do Justice thereupon: And then he shall say in the End of the Writ, *And therefore we command you, that at a certain Day, of which the same R. F. and S. or two of them, shall give you Notice, you cause the Record and Process of the Plaint aforesaid, with all Things touching the same which remain in your Power, as it is said, to come before them, or two of them, at the Place aforesaid; and do you the aforesaid Sheriffs give Notice to the aforesaid A. that he may be then there to hear the Error (if any shall happen to intervene in the Record and Process aforesaid, or in the giving Judgment of the Plaint aforesaid) and further to do and receive that which our Court shall consider in this Behalf: And have, &c.*

And if a Man hath Judgment given for him in *London* before the Sheriffs^A in their Courts, or before the Mayor and Sheriffs in the *Hustings of London*, and the Defendant, to delay the Execution of the Judgment, sueth a Writ of Error to remove the Record before the Mayor, &c. and after the Party Defendant who sued that Writ of Error, will by subtil Means convey his Goods out of the City, or otherwise waste them, to the Intent that the Plainant may not have Execution of his Goods; then the Plainant who had Judgment to recover shall have a special Writ directed unto the Mayor and Sheriffs, that they provide that the Goods amounting unto the Value of what is recovered, be safely kept to satisfy the Plaintiff, if the Judgment be affirmed for him; so that Execution may be done of the first Judgment upon the same Goods.

And if Judgment be given before the Sheriffs of *London* for the Plaintiff,^B and the Defendant sueth a Writ of Error, and removeth the same before the Mayor and Sheriffs in the *Hustings*, and when he hath removed it by a Writ of Error, if he will proceed no further upon the Writ, &c. then the Plainant who recovered shall have a special Writ unto the Mayor and Sheriffs, that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment be affirmed. And upon that Writ he shall have an *Alias* and a *Pluries, vel Causam nobis significes* in the *Pluries*, if he will not proceed, &c. And this Writ was devised by *Parning*, then Lord Chancellor, and by him diligently examined, as it appeareth by the Register.

And

C And if False Judgment be given in Ireland, the Party may sue a Writ of Ant. 22. E. Error in the King's Bench in England; and the Writ shall be such:

The King to his beloved and faithful A. his Justice of Ireland, greeting: Because in the Record and Process, &c. Error, &c. to the great Damage of him the said B. as we have been informed by his grievous Complaint: We, &c. that you send to us the Record and Process of the Plaint aforesaid, with all Things touching them, under your Seal distinctly and openly, and this Writ, so that we may have them (such a Day) &c. that we inspecting the Record and Process aforesaid may further cause to be thereupon done that which of Right ought to be done. And do you give Notice to the aforesaid S. that he be then there to proceed in the Plaint aforesaid, and to do and receive that which our Court shall consider in the Premises. Witnesses, &c.

Error.

D **T**HE King to his beloved and faithful I. of T. greeting: Because in the Record and Process, and in the giving of Judgment of the Plaint which was before you and your Companions our Justices of the Bench, by our Writ, between A. and B. of a Record and Process of an Assise of Novel Disseisin, which was summoned between them, and taken at S. before our beloved and faithful I. of I. and his Companions Justices, assigned, &c. concerning Tenements in W. which Record and Process we indeed for certain Causes caused to come before you, manifest Error hath intervened, to the great Damage of him the said A. as we have been informed by his grievous Complaint: We being willing that the Error (if any shall be) in this Behalf be corrected in due Manner, and that Justice be done thereupon to the Parties aforesaid, as it ought, do command you, that if (a) Judgment thereof be given, then that you send to us as well the Record and Process of the Plaint aforesaid so had before yourselves, as also the Record and Process of the Assise aforesaid sent before you, with all Things touching them, under your Seal, &c. so that we may have them, &c. that having inspected, &c.

E And this Writ of Error lieth where the Assise passeth in the County before the Justices of Assise, and afterwards it is removed into the Common Pleas, and there is Judgment given: Now the Party may sue this Writ of Error, if there be any Error in the Matter; and upon that he may have an *Alias* and a *Pluries*, if the Justices will not rectify the Record, &c.

(a) So that if the *Teste* of a Writ of Error be before the Judgment, it is no *Superfedeas*. 22 H. 6. 6, 7.

See a Writ of Error returnable in Chancery, and the Record sent thence by *Mittimus* into B. R. 50 Aff. 4.

Note; Error on a Judgment in Assise does not lie before the Justices of C. B. For they have no Power to write to them. *Dyer* 250. *per Cur'*.

See *Mag. Char.* c. 11. *Communia placita non sequantur Curiam nostram sed teneantur in aliquo certo loco*—Here we may note, That although Common Pleas could not be held immediately in

B. R. yet where there was a Defect (of Power) in the Court where, by Law, they ought to be originally held, they might be held in B. R.

As if a Record be brought (into B. R.) out of the Common Pleas by Writ of Error, there they may hold Plea thereof to the End of the Suit. So if a Plea on a Writ of Right be removed out of the County Court by *Pone* into B. R. And so it is, if on a Writ of Mesne, Replevin, or *Nativo habendo*, a *Sicut pluries* be awarded returnable in B. R. See 11 H. 4. 49. *per Harkford & Gajcigne*; and see *F. N. B.* 3. 10 H.

[25.] And if the Justices of that Bench, or other Justices, upon the Writ of Error A will not certify all the Record, then the Party who sueth the Writ of Error may alledge (a) Diminution of the Record, and pray a Writ unto the Justices who certified before the Record, to certify all the Record; and the Writ shall be such:

The King to his beloved and faithful W. of T. greeting: Whereas at the Prose- B cution of I. of H. suggesting to us that manifest Error had intervened in the Record and Procefs, and also in the giving of Judgment of the Plea which was before you and your Companions our Justices of the Bench, by (b) our Writ, between W. of T. (c) Demandant, and I. of R. (c) Tenant, of fifteen Messuages with the Appurtenances in S. We lately commanded you, that if Judgment thereof was given, then you should send to us, under your Seal distinctly and openly, the Record and Procefs of the Plea aforesaid, with all Things touching them, and our Writ which thereupon came to you, so that we might have them on the Morrow of Saint Martin last past, wheresoever we should then be in England; and now on the Behalf of the aforesaid I. of H. it is shewn unto us, that although under Pretence of our said Writ you may have sent before us on the said Morrow the Record and Procefs aforesaid in some Part thereof, yet other Part of the same Record and Procefs, and also certain other Things touching them, still remain before you to be sent, to the no small Damage and Grievance of him the said I. of H. Therefore, if so it is, then we command you, that you send to us, under your Seal distinctly and openly, the Residue of the Record and Procefs aforesaid, and also all other Things touching them, which, as is before said, remain before you to be sent, and this Writ; so that we may have them, &c. (as above).

(a) It is a general Rule, That after *In nullo Erratum* pleaded by the Defendant, no Diminution can be alledged: So is 1 *Cro. Robert* vers. *Andrews, Beer and Beecher's Case, Moor 700.* and *Dayrel and Thynn's Case, 1 Leonard 22.* See 7 *Ed. 4. 25.* 9 *Ed. 4. 32.* 1 *Co. 36.* 5 *Co. 37, &c.*

But tho' such Diminution cannot be alledged, nor a *Certiorari* granted (after *In nullo Erratum, &c.*) at the Prayer of the Party upon Record, yet it may be granted on Information given to the Court by any Person (as an *Amicus Curie, &c.*) of the Defect in the Record: But this is in the Judgment and Discretion of the Court, as was held in *Weaver and Felton's Case*; entered *Hill. 1 Cur. 1. Rot. 647. B. R.* where the Defendant pleaded an *In nullo Erratum*, and then alledged Diminution, and prayed a *Certiorari*, which at first was granted, and the Record certified, &c. But before this was entered of Record in *B. R.* the Court were informed thereof, and refused to receive it, because it came in at the Prayer of the Party, which it ought not to do: But upon Information (by one as *Amicus Curie*) they granted it; and at the same Time they looked into *Bishop's Case, 5 Co. 37. b.* where, though my Lord *Coke* reports, That after *In nullo Erratum* pleaded Diminution may be alledged, yet in the Case cited there was no *In nullo Erratum* pleaded, but Judgment was against the De-

fendant by *Nilil dicit*, and then the Diminution alledged, and the *Certiorari* granted at the Prayer of the Party, came Time enough. And note the Reason given in 7 *Ed. 4. 25.* by the Judges, Why after *In nullo Erratum* pleaded Diminution cannot be alledged; *viz.* Because it appears by the very Record, that all the Parties thereto are agreed, that it is a true and perfect Record, and therefore the Parties themselves shall not be admitted to contradict their own Agreement, appearing in the Record: Yet it seems the Court on Information, *ut supra*, may take Notice of the Diminution, and then *ex officio* are to award a *Certiorari ad informandam conscientiam Curie. Quere.*

If a Writ of Error is brought in *C. B.* of a Judgment in an inferior Court, and the Judgment is there affirmed, and then a Writ of Error is brought in *B. R.* on the Judgment so affirmed; in that Case no Diminution can be alledged of the Record in the inferior Court: For now the Judgment in *C. B.* is only in Question. So resolved *Paf. 20 Jac. 1. B. R. Bannister and Kennedy's Case.*

(b) But if the Writ of Error, &c. were in the Time of another King, then the Form of this Writ is otherwise. *Dyer 105.*

(c) It is sufficient to name them so, without saying *Filius & Hæres, or Assignatus.* Yet Error was brought on a Recovery in Covenant against one and his Assignee. *Dyer 356.*

Dedimus

Dedimus potestatem de Attornato faciendo.

C IT seemeth, that before the Statutes which gave Power unto a Man to make an Attorney, the Justices would not suffer that the Plaintiff, or the Defendant, or the Demandant, or the Tenant, should make Attorney in any Action, Suit or Bill, in any Court of Record, nor in any other Court which was not a Court of Record, because the Words of the Writ do command the Defendant for to appear, &c. and that was always taken to be in proper Person. Post. 156.

The Form of Entry in every Action for the Plaintiff, or Demandant, is: *And the aforesaid Plaintiff hath on the fourth Day offered himself, &c. and the aforesaid Defendant cometh not; therefore it is commanded to the Sheriff, that, &c.* by which it is taken, that the Plaintiff was to appear in proper Person. But now by the Statutes he may make Attorney in a Court Baron, or other Courts; and may make Attorney for Suit Personal at the Hundred, or other Court Baron; but for Suit Real at the Leet, or at the Sheriff's Torn, he cannot do it by Attorney, but he ought to do the same in proper Person. But it seemeth that the King by his Prerogative, and before the Statutes, might give Warrant unto a Man to make Attorney in every Action or Suit, and that as well unto the Demandant or Tenant, as unto the Plaintiff or Defendant; and that he may direct his Writs or Letters unto the Judges of Courts, commanding them to admit and receive such Persons by their Attorney, and that the Judges are bound to do the same. And it seemeth one Cause is, because it shall not be Error, if the Judge do admit any Plaintiff or Defendant to make Attorney in any Suit or Action, in which by the Law he ought not to make Attorney: *Quod vide* in Title *Error*, H. 36 Ed. 3. and Title *Attorney*, T. 37 H. 6. Br. Attorn. 1. 84.

D And if Tenant for Life be impleaded in a *Præcipe quod reddat*, he in the Reversion may pray to be received to defend his Right upon the Default of the Tenant, or upon his faint Pleading, and there he cannot pray to be received by his Attorney. But if he bring a Writ unto the Justices out of the Chancery, testifying that he hath made Attorney there, and rehearse the Cause whereof, that is to say, because he is sick, or other reasonable Cause, and commanding

(a) *Vide ante* 22. D. 8 Co. 50. b. 11 H. 4. 29. 22 H. 6. 13. 24 Ed. 3. 25.

(b) Where he may appear in Person. See 36 Ed. 3. F. *Error* 86. 37 H. 6. 27. But to admit one who is within Age to appear by Attorney, is Error. 22 H. 6. 31. 1 H. 5. 6. *Dyer* 262.

(c) See 18 Ed. 3. 47. in the Case of the Earl of Gloucester, who being sick, &c. his Attorney found Sureties for Issues, &c. because the Warrant was *ad faciend' quicquid prædict' Comes faceret si præsens esset*. See 4 H. 4. 1. 13 H. 6. 28. And so it is of a Recluse or Feme Covert.

But if the Writ be *ad recipiend' Attorn' ad defendend'*, &c. *Si contingeret* that the Baron makes Default at such a Day. If in case the Baron does not make Default, but appears, and renders, and afterwards she makes Default, &c. she shall not be received by Attorney, but ought to have her general Writ. 9 H. 6. 37.

Note; There are three Cases of *Resceit*, viz. 1. *Quia Prægnans*. 2. *Quia Recluse*. 3. *Quia in periculo Mortis*. And that the Writ being, *Accepimus*, &c. & *legale Testimonium testatur quod Uxor*, &c. *ita infirmatur*, &c. is good. 19 H. 6. 46. a. b.

Post. 27. D.
Plow. 76.
Post. 27. B.

commanding them to receive such Person by Attorney for him in the Rever-
sion; the Court ought and is bound to receive him by his Attorney. And it
is not material, whether the Cause put in the Writ be true or not, for it is not
traversable, &c.

Aliter 27 H. 8.
Br. Attorney
84.

And the King by his Letters Patent may license a Man to make a general **E**
Attorney in all Pleas moved and to be moved, and in whatsoever Courts: And by
his Letters Patent he may express who shall be Attorney, &c. or may grant
to make Attorney whom or who he will, without naming any Attorney by
his special Name.

And the King by his Writ may send to any Person to receive Attorney for
another, such Person generally as the other will name, or such Persons speci-
ally; and that may be as well for the Demandant or Plaintiff, as for the De-
fendant or Tenant.

Register 9.
Br. Attorney
84. that is in-
tended of the
King's Court;
for it doth not
extend to base
Courts, as
Court Baron,
&c.

And the King may give Authority unto one Person to receive Attorney for
another in all Pleas and in all Courts, for two or three Years. And the King
may grant a *Dedimus potestatem* to receive Attorney for another, for a special
Cause recited in the Writ, because he is languishing, or lame, or decrepid,
&c. or such other like special Cause. Or he may grant a *Dedimus potestatem*
in the Generalty to receive Attorney for another in all Pleas, without express-
ing any Cause in certain wherefore he doth so.

Vide 32 H. 6.
22.

[26.]

And also it appeareth by the Register, that the King by his Letters Patent **F**
may grant unto the Prior of Saint *John's of Jerusalem*, that he may make
two of his Friars, and name them, &c. in his Place, which is in the Place of
a Proctor; that the two Friars shall make Attorney for the Prior in every
Action which is pendent, or to be brought against him in any Court, &c. and
for to challenge his Liberties, and for to defend them.

And also the King by his Letters Patent may grant unto an Abbot, for the **A**
Devotion that he oweth to the House, that he may make a General Attorney
for all Pleas and in all Courts; and the said Abbot may remove him and put
others in his Room, as often as it shall seem good and needful for him so to
do: And so by this it doth appear, that the King may grant unto all his Sub-
jects to make Attornies in the same Manner, without putting or shewing any
Cause in the Letters Patent.

Note; When an Attorney is made, he continues
so always pending the Plea. If the Tenant makes
an Attorney in *C. B.* and afterwards Conu-
fance is granted, he shall be Attorney for the Tenant
in the Franchise also; and therefore the Tenant
cannot be effoined. Adjudged, because he had
an Attorney to remove, &c. So an Attorney in
C. B. is also Attorney at the *Nisi prius*. So an
Attorney made at first by the Tenant shall be
Attorney in *C. B.* after the Plea resummoned;
and yet in none of these Cases is the Attorney
bound to travel, &c. And expressly by *Banks*,
If the Tenant appear by Attorney in *C. B.* and
Judgment is given against the Defendant on an
erroneous Process, and then the Record is re-
moved by Error into *B. R.* and the Errors re-
dressed, so that they are to plead again upon the
Original, the Attorney made by Warrant in *C. B.*
shall serve also in *B. R.* 21 *Aff.* 17.

And *Note*; When Judgment is given against
the Tenant, after the Judgment the Warrant of
his Attorney is determined: But the Deman-
dant's Warrant of Attorney is not expired by the
Judgment; for he may sue Execution within the
Year; but after the Year he cannot sue out Exe-
cution without a new Warrant. See 8 *Ed.* 3.
pl. penult. 33 *H.* 6. 44. *a.* 34 *H.* 6. 51. *a. b.*
A Warrant of Attorney against the Tenant or
Defendant shall serve against the Vouchee or
Garnishee. But by *Rikill*, not for him who in-
terpleads with another in a Writ of Ward; *quod*
Brian concessit. 7 *H.* 4. 3. *pl.* 9. adjudged 8 *H.*
4. 9. *b.* And therefore in the Case of Inter-
pleader it must be said expressly, That he is
Attorney to cause his Master to appear, &c.

And

B And it appeareth by the Register, that the King may grant the same as well by Letters Patent under his Privy Seal, as by Letters Patent under his Great Seal.

And when the King makes a General Grant unto an Abbot, or unto any other, to make such General Attornies, then it seems the Abbot shall come into the Chancery, or shall send his Deed under his Seal unto the Chancellor, witnessing that he hath made such and such Persons his Attornies, &c. And thereupon the Chancellor shall make Letters Patent unto the Abbot, testifying that he hath made such and such Persons his Attornies in all Pleas and Courts; and upon these Letters Patent shewed unto the Court, the Judge ought to admit and receive those Persons for Attornies for the Party; and these Letters Patent shall be entered upon Record in the Chancery.

C And the King may send his Writ unto the Justices of the Common Pleas, or unto the Justices in Eyre, or other Justices whatsoever, testifying that such a one hath made his General Attorney in all Pleas and Quarrels moved against him or by him, and also to challenge his Franchises, or to defend his Franchises, commanding the Justices by the Writ that they receive him for Attorney, &c.

There is another Writ also in the Register, That the King by his Writ shall command his Justices in Eyre, that they admit and receive the Claim of such a one to certain Liberties, which he shall make and claim before them by his Attorney, because himself cannot be personally before them at the Day.

D There is another Form of Writ to the Justices, that they admit such a one by his Attorney, whom the said Party shall make his Attorney by Letters Patent under his Seal.

(a) And a Man may make his Attorney before the Justices, without making an Attorney in Chancery, or without suing any Writ unto the Justices, commanding them to admit any Attorney for the Party, Plaintiff or Defendant; as the common Course is at this Day for an Attorney for every Party to appear in every Manner of Action, that they can appear by Attorney, and (b) put in their Warrants without any such Writs, if not, that they be in Writs of Entry in the *Post*, or Writ which is by Covin between the Parties, or a Writ of Right: Then the Justices in Discretion do not admit any Man to appear as Attorney for the Party Defendant, unless the Defendant do before some Justice confess him to be his Attorney, and that the Justices do record the Warrant, or otherwise that he bring a Writ out of the Chancery, testifying that he hath there made Attorney, commanding them to receive him for his Attorney.

(a) *Note*; An Infant shall not be admitted to be Attorney. 1 *H.* 5. 6.

(b) If one appears by an Attorney who has no Warrant of Record, yet if he was admitted before by a Justice, and is afterwards entered, it is good. 4 *Ed.* 4. 13. *a. b.* So if one is accepted by the Court to be Attorney before his Appearance. 41 *Ed.* 3. 1, 2 and see 4 *Ed.* 3. 45. *b.* where one was admitted conditionally by the

Judge, *viz.* if his Master would assent, and after the Appearance the Master assented, &c. 7 *H.* 4. 4. held good; and see 11 *H.* 6. 42.

The Justices of *C. B.* may record a Warrant of Attorney taken before a Judge of *B. R.* notwithstanding the Statute.

A Warrant of Attorney must be recorded before Judgment. See now the Statute 4. 5 *Annæ* for Amendment of the Law.

But.

- 22 Ed. 4. 2. But there are divers Cafes in which the Juftices will not admit the Defen- E
 3 H. 4. 5. dant by Attorney; as, if he came in by *Cepi corpus* (a), they will not admit
 29 H. 6. 43. him by Attorney until he hath pleaded fome Plea, and then in Difcretion they
 42 Ed. 3. 31. ufe to fuffer the Defendant to make Attorney. But if the Defendant come
 47 Ed. 3. 21. by *Cepi corpus* upon the Exigent, the Juftices will not admit him to make At-
 21 Ed. 4. 77. torney, but give him Day by Bail from Term to Term, until the Matter be
 8 H. 6. 29. determined; and that feems to be at their Difcretion for his Contumacy; for
 3 H. 4. 4. 6. in that Cafe, if they do admit him to make Attorney, and to go without Bail,
 33 H. 6. 28. it is no Error; as it feemeth unto me.
 V. 9 Ed. 4. 36. ante 25.
 2 H. 4. 23. (b) At the *Grand* or *Petit Cape* returned, the Tenant may appear by Attor- F
 3 H. 4. 2. ney, and tender to wage his Law, and take Day to wage the fame; at which
 41 Ed. 3. 29. Day he ought to appear and make his Law. See 7 H. 4. 3.
 1 H. 7. 25. And a Man fhall not make an Attorney againft the King in any Action G
 37 H. 6. 27. fued by the King. 9 Ed. 4. 4. 22 Aff. 72.
 acc'. Upon a Refcous returned by the Sheriff, and an Attachment awarded upon H
 37 H. 6. 27. it againft him, the Defendant fhall not make Attorney; but upon his Ap-
 acc'. pearance fhall be prefently committed unto the *Fleet*. But if the King fend a
 5 H. 7. 3. Privy Seal unto them, commanding them that they admit Attorney for him,
 5 Ed. 4. 6. the Court ought to receive the Attorney without Appearance in proper
 8 Ed. 4. 3. Perfon.
 5 H. 7. 7. And a Man fhall fue a Writ of Error by Attorney, if he be not in Ward. I
 One cannot In an Appeal the Plaintiff fhall make Attorney againft the Abettors, if he K
 affign Errors by Attorney. fhall fue againft them a *Distringas*, &c. even after Ifsue joined. 40 Aff. 17.
 1 H. 7. 27. In a *Quem redditum reddit* the Defendant fhall not make Attorney but with L
 7 H. 4. 2. Affent of the Parties (c).
 32 H. 6. 22. *Con.* In a *Quid juris clamat*, or *Per quæ fervitia*, after a Plea pleaded the
 39 Ed. 3. 26. Defendant fhall make Attorney. It feemeth likewife in a *Quem redditum red-*
 after 147. a. *dit*. 7 H. 4. 2. 44 Ed. 3. 34.
 21 Ed. 3. 48. In a *Præmunire* the Defendant fhall not make Attorney without a fpecial M
 Hill. Br. At- Writ directed to the Juftices.
 torney 36. After a *Capias ad computandum* awarded, the Defendant fhall not make At- N
 15 H. 7. 6. torney.
 9 Ed. 4. 2. acc'.
 32 H. 6. 22. (d) A Man may demand Conufance of Pleas by Attorney. O
 9 H. 7. 11. (d) The Plaintiff after Appearance fhall make Attorney in an Appeal by P
 3 H. 7. c. 1. the Statute of H. 7.
 Ruffal,
 Murder 2.

(a) Trefpafs was brought againft A. and B. the Defendant comes in by *Cepi corpus*, where in the *Capias* the Words (*de Banco*) were omitted. And yet becaufe the Roll was right, he could not make an Attorney. 8 H. 5. 2.

(b) The Mefne fhall not join in Aid with the Tenant in Replevin by Attorney: But the Leflor by Procefs may join by Attorney with the Lefsee Plaintiff in Replevin. 4 Ed. 3. F. Joinder in Aid 16, 17. 1 H. 4. 28.

(c) See Dyer 135. b. A *Dedimus potestatem* to Juftice Saunders to refer to the Defendant in a *Quid juris clamat* to receive an Attorney to plead, &c. (fo to receive an Attornment) *propter Impotentiam & Senectutem*.

Note; The Matter and Substance of the Plea is contained in the Writ. See 48 Ed. 3. 57. 7 H. 4. 2. 1 H. 7. 27. 6 H. 7. 10.

(d) See 15 H. 7. 9. 9 Ed. 4. 2. 40 Aff. 17. 21 Ed. 4. 73. 8 Ed. 4. 313. Bro. Attorn. 91.

- A (a) He who pleads *Misnomer* shall not make Attorney; *quod vide P.* [27.]
 41 *Ed. 3.* & *M. 45 Ed. 3. Fitz. Attorney 52.* 27 *H. 8. 11.*
- B In a *Scire facias* upon a Charter of Pardon, the Plaintiff in the *Scire facias* shall not make Attorney; but with the Assent of the other Party he may. 2 *R. 3. 9.*
 41 *Ed. 3. Attorney 50.*
- C (b) A Feme Covert may be Attorney for her Husband. 2 *R. 3. 9.*
- D (c) At the *Sequatur sub suo periculo*, the Vouchee shall not enter into the Warranty by Attorney. Perkins 41.
 11 *H. 4. 28.*
- E In *Attaint* the Petit Jury shall make no Attorney. 21 *H. 7. 39.*
- F The Defendant shall not make an Attorney in *Maikem*. 10 *Ed. 3. 2.* contra.
- G An Idiot shall not be received to sue or defend in any Action by Guardian, or by *Prochein Amy*, but ought to be always in proper Person. *P. 33 H. 6.* 21 *Ed. 4. 73.*
 33 *H. 6. 18.*
- H (d) An Infant shall sue by *Prochein Amy*; but if the Infant be Defendant in any Action, he shall make his Defence by Guardian, and not by *Prochein Amy*. And the Court shall assign the Guardian for the Infant Defendant, and that is commonly one of the Officers of the Court. 40 *Ed. 3. f. 16.* 29 *Aff. 67.*
Aff. 273.
 3 *H. 6. 17.*
 Markham.
- An Infant sued a Writ of *Waste* against his Guardian, and made Attorney in that Action. 48 *Ed. 3. 10.* 13 *Ed. 3. Bro. Guardian 24.*
- An Infant was received to sue an Action of *Debt* by his Guardian. 16 *H. 7. 5.* 34 *H. 6. 32.*
 It ought to be sued in proper Person by one of full Age.
- I (e) And a Man shall not answer as Guardian unto an Infant who is Plaintiff or Defendant without a Warrant; but as *Prochein Amy* to an Infant he shall sue an Action without a Warrant. 34 *Aff. 5. acc.*
- K The Infant shall not remove his Guardian, nor disavow an Action sued for him by *Prochein Amy*. *Anno 43 Ed. 3. Lib. Aff. & Anno 27 Ed. 3. Lib. Aff. 53.*
- L And the King by his Letters Patent may make a General Guardian for an Infant, to answer for him in all Actions or Suits brought or to be brought in all Manner of Courts. Or may make two or three Guardians jointly and severally to answer for him, or to bring any Action for him; and at the Request of the Infant may grant by the said Letters Patent, that the same Guardians may make other Guardians jointly or severally in their Places, to sue or defend for the same Infant in all Actions and Suits which are brought or sued, or shall be brought or sued after.
- M And the Infant shall have a Writ in the Chancery for to remove his Guardian, directed unto the Justices, and for to receive another, &c. and the Court at their Discretion may remove the Guardian, and appoint another Guardian.

(a) Not he who acknowledges himself a Villein. 21 *Ed. 3. 10. a.* But otherwise, if his Plea of Villeinage be in Bar. 29 *Ed. 3. 41. a. b. Kekw. 135.*

(b) *Bro. Attorney 91.*

(c) See 11 *H. 4. 28.* That he shall not do it gratis at the first Day of Vouching.

(d) 40 *Ed. 3. 16. West. 2. c. 15. 27 H. 8. 11. 3 H. 6. 16. 1 H. 5. 6. 29 Aff. 67. 27 Aff. 53. Quare 2 Cro. 641.*

(e) 19 *Aff. pl. 103. 4 Aff. pl. 5. 33 Aff. pl. 3. 34 Aff. pl. 5. 33 Ed. 3. F. Guardian, pl. 25.*

3 H. 6. 16. And see in the Register, after the Writ of *Proteſtion cum clauſula Nolumus*, N
 An Infant ap- Writs directed unto the Bailiffs of Hundreds to receive and admit ſuch Per-
 peared by ſons by Attorney in Court, which the Party will make under his Seal, or
 Guardian, al otherwise: And alſo Writs of *Dedimus (a) potestatem* to remove Attornies
 though it be made, and to put others in their Places, or to remove any of the Attornies,
 in a Perſonal and to put another in his Place. And if a Man make Attornies in Chancery
 Action; but O
quare if he to answer and defend in other Courts, he may come in Chancery and remove
 can ſue Perſonal him, and make others his Attornies: And thereupon he ſhall have a Writ
 Action by unto the Juſtices of the Court where the Attorney is, teſtifying that he hath
 Prochein removed him, and made another his Attorney, commanding them for to re-
 Amy. ceive him, &c.

8 H. 6. 8.
 Aſhton.

3 H. 4. 18. There is a *Dedimus potestatem* granted in the Register to receive an Attorney P
 Feme pro- for him who is Vouchee, becauſe he is received for the Default of Tenant for
 ceeded to be Life: And a Writ directed unto the Juſtices to receive an Attorney for a Wo-
 received and man, who prayeth to be received for the Default of her Huſband, before ſhe
 plead, which be received. And another Writ unto the Juſtices, to receive Attorney for Q
 was not by one Defendant, and Guardian for another Defendant.

21 H. 6. 48. In *Quale jus* awarded, where a *Scire facias* ſhall be awarded againſt the R
 cont. Lords mediate and immediate, they ſhall have a Writ directed to other Per-
 before 25. e. ſons to receive Attorney for them to appear to this *Quale jus* to defend their
 Right; and upon Certificate thereof in the Chancery, he ſhall have a Writ to
 the Juſtices before whom the *Quale jus* is to be tried, to admit him who is
 received Attorney, and ſo returned in the Chancery, for Attorney for the Lords
 in that Action.

Ante 25. D. In Detinue or Ward, where ſhall be Interpleading, they ought to appear in S
 proper Perſon and interplead, &c. And yet upon reaſonable Cauſe he may
 make Attorney in the Chancery, and ſhall have a Writ unto the Juſtices to
 receive him for his Attorney, and rehearſe the Cauſe wherefore; yet it ſeemeth
 it is not material whether the Cauſe be true or no.

Alſo there is another Writ in the Register directed unto the Juſtices for T
 him in the Reverſion, where Tenant for Life is impleaded, commanding them
 for to admit Attorney for him in the Reverſion, if the Tenant for Life make
 Default, as he conceiveth he will, and teſtify in the ſame Writ, that he in
 the Reverſion hath made ſuch and ſuch his Attornies jointly and ſeverally,
 Ante 25. D. commanding the Juſtices to receive them for Attornies, becauſe that he in
 3 H. 4. 28. the Reverſion hath ſuch an Infirmity, that he cannot pray to be received in
 proper Perſon. And the like Writ for a Feme Covert who hath a Reverſion,
 and the Tenant for Life is impleaded, and ſhe conceiveth that her Huſband
 will not pray to be received, &c. But in the Writ it ſhall be mentioned,

(a) See 21 *Ed. 3. 12.* In a Writ of Ward brought by Baron and Feme, the Feme by Writ removed her Attorney, and held good. *Quare*, if ſhe may diſavow her Attorney. 33 *H. 6. 31.* And *Note*; If an Attorney appears for one, he may before any Plea pleaded come in and diſavow his Attorney, and the Appearance of the

Attorney ſhall be he'd null and void: But after Plea pleaded by one as Attorney, he cannot come in and diſavow his Plea; but as to that is put to his Writ of Diſceit; yet he may remove the Attorney (by Writ). 8 *H. 6. 8.* See 17 *Ed. 3. 12.*

that the Feme is decrepiti, or hath some other Infirmity, that she cannot conveniently come to be received in proper Person. 19 H. 6. 46.

V There is another Manner of Writ for the Sheriff, or for the Escheator, to cause the Barons of the Exchequer to admit Attornies for them to make their Proffers in the Exchequer; and yet they are commonly bound in Recognizance to do the same in proper Person. And the Writ is such:

A *The King to his Treasurer and Barons of his Exchequer, greeting: Because our beloved B. our Sheriff of Suffolk, is so much attending about our certain Business of great Concern, wherewith we have specially charged him, that he cannot be personally present before you at our Exchequer on the very Morrow of Saint Michael, or on the very Oſtave of Easter next coming, at his Proffer then there, as the Manner is; we of our special Favour command you, that for this Time you receive R. and I. Clerks, whom the said Sheriff before us in our Chancery hath made Attornies in his Place to make his Proffer aforesaid before you on the said Morrow, or either of them, if both cannot be present in the Place of the said Sheriff for this Purpose, not in any Manner molesting or grieving him the said Sheriff for his Absence on that Day, or on the Oſtave aforesaid. Witness, &c.* [28.]

And the Escheator may have the like Writ for his Proffers to make Attorney. But it seemeth this is not a Writ of Course, but upon a special Commandment directed unto the Chancellor by the King to make such Writ, &c. And the King may send a Writ unto the Treasurer and Barons of the Exchequer, to respite the Account of the Sheriff, and of the Escheator; and the Writ shall be such:

The King to the Treasurer and Barons, &c. greeting: Because our beloved W. of H. our Sheriff of Wiltshire, is so much attending about our certain Business, &c. (as above) that he cannot come before you at our Exchequer on the very Morrow of Saint Michael next coming, to his Account of the Issues of the County aforesaid; we have given to him Respite for rendering his Account aforesaid, until the Oſtave of Saint Hilary next coming, and therefore we command you, that you permit him the said Sheriff in the mean time to have that Respite. Witness, &c.

Protection.

B **P**rotections are in divers Forms and of divers Effects, and the King may grant them for divers Causes. And there are four Manners of Protections with the Clause *Volumus*. One is a Protection, called *Quia profecturus*. And another Protection, *Quia moratur*. And the third is a Protection which the King by his Prerogative may grant; and the same is where a Man is Debtor unto the King, the King may grant unto him, that he shall not be sued nor attached, but taketh him into Protection until he hath paid the King his Debt. But now by the Statute of 25 Ed. 3. 19. it is ordered, That the Creditor shall have an Action against the King's Debtor, and shall have Judgment against him notwithstanding such Protections. But he shall not have Execution against the King's Debtor who hath such Protection, unless he take upon him to pay the Debts which the King's Debtor owed unto the King; and

V. 27 Ed. 3. 88.
39 H. 3. 8. &
Stat. Praiog.
Regis 25 Ed.
3. c. 19.

and then he shall have Judgment and Execution against the King's Debtor for both Debts, &c.

Quere Co.
Calvin's Case
8. a.

There is another Protection *cum clausula Volumus*; and that is, when the King sendeth a Man in his Service into the Wars beyond the Seas, or into the Marches of Scotland, and there he is detained and kept Prisoner; he shall have a special Protection reciting the whole Matter; and in the End of the same Protection shall be such Clause: *These Presents not to avail after the Delivery of the aforesaid R. from the Prison aforesaid, if it happen that he is again to be delivered from the same.* And the Form of divers of these Protections doth appear in the Register. But as the Law is now, every Protection cast shall not be allowed: For if the Protection be to endure for two or three Years, the Justices will not allow the same; and therefore the Form of the Protection at this Day is to endure for one Year and a Day after the Date thereof, and then to sue forth a new Protection, if need be. And a Protection may be cast for the Party by a Stranger as well as by the Party himself.

39 H. 6. 38,
39.

And Protection *Quia profecturus* shall not be allowed, if it be presented hanging the Plea, if he be not in a Voyage Royal; and a Voyage Royal is, where the King goeth to the War, or his Lieutenant, or his Deputy Lieutenant, and not otherwise.

38 Ed. 3. 1.

And the Plaintiff cannot cast a Protection, (a) for the Protection is always for the Defendant, and shall be cast for him; if it be not in special Cases, where the Plaintiff becometh Defendant. But when a Protection shall be allowed, and when not, appeareth more plainly in the Title of *Protection* in the great Abridgment of the Years, and therefore it is not needful to shew it here.

And by the Register a Man shall be by Protection, when he stayeth upon the Safeguard of the West-marches of England against Scotland. Yet Anno 22 Ed. 4. such Protection was disallowed. But I am of Opinion with the Register.

A Protection *Quia moratur* upon the Sea was disallowed, Trin. 36 H. 6. because that the Sea cannot stay, and by Consequence he cannot stay upon the Sea.

And a Protection shall be allowed in a Court of Ancient Demesne, or in other Court of Record, as London, &c. And when the Plea is removed, the

(a) Nor may the Plaintiff in *Replewin* after Avowry. 20 R. 2. F. *Protection* 106. 5 H. 5. 5. 24 Ed. 3. 26. *contr'* 17 Ed. 3. 24. a. *per Shard.* Nor for the Defendant therein after an Avowry by him. 38 Ed. 3. 1. a. *Finchden.* 25 Ed. 3. 43. Nor the Plaintiff in an *Audita Querela.* 47 Ed. 3. 5. b. Nor the Defendant therein. 13 Ed. 3. F. *Protection* 71. But this is intended when the Estate is to be executed, and not when it is already executed, and the Suit is to have Execution: For it seems there, if it so appear by the Writ, the Protection is allowable at the *Venire facias.* 47 Ed. 3. 3, 4. In a

Scire facias on a Charter of Pardon against the Plaintiff, after the Plaintiff has counted, a Protection lies for the Defendant; but not before. 43 Ed. 3. 36.

In a *Quod ei deinceps*, after the Tenant has made Title, a Protection does not lie for him. 38 Ed. 3. 2. but it does before. 43 Ed. 3. 6. But after Title so made for the Tenant, it lies for the Plaintiff. 20 R. 2. *Protection* 106. 5 H. 5. 5.

It lies for the Garnishee at the Day of the Return of the *Scire facias*; but not after he has made Title. 3 H. 6. 18. 9 H. 6. 36.

Protection may be allowed: (a) And a Protection allowed for one Defendant doth put the Plea without Day for all the rest; if not that it be in special Cases, as in Trespass, where they plead several Pleas, and he shall sue several *Venire facias* upon the Issue joined against them, &c.

7 H. 6. 21. *contr'* if they plead; vide Plea in Tref. 15 Ed. 4. 27. 4 H. 4. 4. 3 H. 4. 5.

And a Protection shall be sometimes disallowed for Variance betwixt the Writ and the Protection: But see that in the Title *Protection* in the Abridgements.

L. (b) Protection shall be allowed for an Infant; but there are divers Opinions amongst the Justices, if it shall be allowed for a Feme Covert.

M And how a Protection shall be made void, see Title *Protection*, and in the Title *Repeal* in the Abridgements. [29.]

A There is another Manner of Protection, *cum clausula Nolumus*, as appeareth in the Register; and that is, where an Abbot or a Prior, or other spiritual Person, be in Fear or Doubt that his Goods or Chattels, or his Cattle, shall be taken by the King's Officers for the King's Service; they may purchase

B this Manner of Protection *cum clausula Nolumus*. And by the Register appeareth, that the King may grant unto a secular Man this Writ as well as unto a spiritual Man; and if he do so, the same is good, &c.

C And a Man may excuse his Default at the *Grand Cape* or *Petit Cape*, by casting of a Protection.

And if a Man be essoined of the King's Service, the Plaintiff may have a special Writ directed unto the Justices to disallow of the Essoin, if he be not in the King's Service, commanding them for to proceed, &c.

D And it appeareth by the Register, f. 280. that there are divers Manners of Forms of Protections: Where a Man feareth to travel the Country with his Merchandizes, or to collect the Alms for the Poor of an Hospital, or of the Church, then they may purchase Letters Patent of the King's Protection, commanding the King's Subjects for to defend them, and to maintain, aid and assist them: And the Form is such:

E *The King to all his Bailiffs and faithful People to whom, &c. greeting: A. hath besought us, that whereas he prosecuteth his divers Affairs in our Courts, and elsewhere within our Kingdom of England; and the same A. by reason of such Prosecution is afraid of Damage, as well to himself as to his Men and Servants in their Persons and in his Affairs, by certain Persons emulating him, and by their Procurement; (or thus) Damage of his Body and Loss of his Goods, which easily may be, &c. and Peril which easily may happen, we will graciously take care of his Security in this Behalf; we being willing to preserve Peace and Tranquillity every where in our Kingdom, have taken him the said A. and his Affairs aforesaid, prosecuting in our said Courts, and elsewhere within our Kingdom of England, while he stays there, and in returning from thence to his own, and also his Men and Servants, and his Things and Goods whatsoever, into our special Protection and Defence; and therefore we command you, that you maintain, protect and de-*

(a) In a *Præcipe* against two, or if two Tenants by Warranty are, and they vouch or plead to Issue, and one of them makes Default, yet a Protection lies for the one or the other; and at the Day of the *Petit Cape* the Parol shall not be put without Day against the other. 5 H. 5. 7.

Yet 11 H. 4. 7. adjudged *contr'*, if it was at the *Grand Cape*, or before Default by him made. 13 Ed. 3. *Protection* 70. 19 Ed. 2. *Protection* 77.

(b) See *Co. Lit.* 130 a. That a Protection lies for a Feme *quia Nutrix, Latrix* or *Obstetrix*.

send him the said A. in prosecuting his said Busineses in our Courts, and elsewhere within our Kingdom aforesaid (as is premised) in his Staying there, and in his returning from thence to his own, and also his Men and Servants, and his Things and Goods whatsoever, not bringing upon them, or, as much as in you lies, permitting to be brought upon them by others, any Injury, Trouble, Damage, Violence, Hindrance or Grievance; and if any Thing has been taken from them as a Forfeit, or been injured, you cause Amends to be made to them for that without Delay: Nevertheless, provided that he the same A. do not prosecute, or attempt or presume in any Manner to attempt or prosecute any Thing, which is in Prejudice of us or our People, or which is against, or may tend to weaken an Ordinance lately made thereupon by Lord E. lately King of England, our Grandfather. In Testimony whereof, &c.

And these Letters may be made and directed to Sheriffs, Admirals, Mayors, F and all other Officers, &c. And thereby it appeareth, that they ought to see and provide, that such Persons who have purchased such Letters, have by reason of such Letters Favour and Right done unto them, because it appeareth the King's Will so to be, &c. And there is the like Protection for those who go with Pardons, or to make Collection for Bridges or Highways; and the like for spiritual Persons; and the like Protection for Merchants Strangers, which go into the Country to gather their Debts, or to sue for them, &c. There is another Form of Protection, which is such:

(a) *The King to all and singular our Sberiffs, Escheators, Mayors, Bailiffs, G Ministers, and to all our faithful liege People whatsoever, as well Commons of our Town of Southwark, as to others within and without the Liberties, who shall see or hear these our present Letters, greeting: Know ye, that we have taken into our special Protection T. W. and his Men and Servants, Manors, Lands and Tenements, his Goods and Possessions, being in London, Southwark, Hatham and H. in the County of Surry, and in S. C. and D. in the County of K. and also his Writings and Muniments whatsoever: And therefore we command you, that you maintain, proteēt and defend him the said T. W. and his Men, Servants, Manors, Lands, Tenements, Goods, Possessions, Letters, Writings and Muniments aforesaid, not bringing or permitting to be brought upon them, or any of them, any Injury, Trouble, Damage, Violence, Waste, Destruction, or Burning of his Houses or other his Goods and Chattels, or other Hindrance or Grievance: And by the Faith, Love and Allegiance whereby ye are bound to us, ye may in no wise omit, nor may any of you omit these Things under a grievous Forfeiture to us. In Testimony whereof, &c. to continue for one Year. Witness, &c.*

And another Protection for the Prior of St. John's, and for his Priory, &c. II And those are of divers Forms, as appeareth in the Title of Protection in the Register, and therefore see them there. But these Protections are by the King granted of Grace; for every Man who is a loyal Subject, is in the King's Protection; but these Protections are granted to move and excite the King's

(a) Where the King takes the Lands, Goods, &c. into his Protection, by reason of Dilapidations by an Abbot: In an Assise against the Abbot and one G. S. his Lessee, he shall not have Aid of the King: For when a Man is taken into

the King's Protection, by reason whereof another Man is delayed of his Action, such Protection being without Cause, shall be no Cause to have Aid of the King, which would cause further Delay of the Party. 11 H. 6. 10.

Subjects to aid and comfort those who have such Protections, in their Business which they have to do in the Countries, for the Causes mentioned in the Protections. And it appeareth by the Register, that every spiritual Person may sue forth a Protection for him and for his Goods, and for their Fermors of their Lands for their Goods, that they shall not be taken by the King's Purveyors, nor their Carriages or Chattels taken by other the King's Officers. And it appeareth by the same Protection, that King *Edward* in the fourteenth Year of his Reign, by special Statute did grant such Privilege to the Clergy, whom he took into his Protection, with their Goods and Carriages. And they may have a special Commission directed unto certain Persons to arrest such Purveyors or Officers, and to send them before the King's Council, there to answer their Misdoinings in such Case; and for the same Protection see the Register, fol. 289. [30.]

(a) Writ de Droit de Advowson.

- A** Writ of Right of Advowson lieth only for him who hath an Estate in the Advowson to him and his Heirs in Fee-simple, or Right of Estate to him and his Heirs in Fee-simple in the Advowson; and if he be disturbed to present, then he shall have the Writ. But if a Man have an Advowson to him and the Heirs of his Body begotten, and for Default of such Issue, &c. the Remainder unto him and his Heirs in Fee-simple; if he be disturbed, he shall not have this Writ, but a *Quare impedit*, because he hath not Title to the Advowson but in Tail, and he ought to maintain the Action by that Title that he claimeth the Possession of the Advowson, and that is of an Estate in Tail. And in this Writ he ought to count of his own Possession, or of the Possession of his Ancestor; otherwise the Writ doth not lie, and he ought to alledge Esplees (b) in the Parson; as in taking of gross Tithes, Oblations and Obventions unto the Value of, &c. And the Tenant shall come and make Defence, and (c) may join the Mife by Battel or Grand Assise, &c. And see the Form of the Count, and the Defence, and of joining the Mife, in the Book of *Entries*, fol. 90.
- B** And a Man who claimeth to have Fee-simple in an Advowson, may have a Writ of Right of Advowson of a Moiety of the Church, or of one third Part, or one fourth Part of the Church, &c.

4 Ed. 3. 18.
44 Ed. 3. 25.
Wilby Brief
713. and
Br. Estates 65.
Tenant in
Tail brought
this Writ, and
recovered but
an Estate in
Tail.
24 Ass. 4.
Br. Tail 24.
he may have
Darrein Pre-
sentment.

39 H. 6. 20 a.

(a) This Writ being brought by an Abbot Parson imparsoned, if he counts that he holds to his proper Use, &c. he shall have Judgment accordingly; but if he counts on a Presentment, *contra*. See 11 H. 4. 88. a b. and Note, without such Surmise, he shall not have such a Judgment nor Execution; and yet upon a general Judgment one shall have a *Scire facias* against the Parson to have Execution to hold to one's proper Use, &c. See 19 Ed. 3. Judgment 124.

yet *quare* 34 Ed. 3. *Quare impedit* 197. 32 Ed. 3. Judgment 141.

(b) And therefore by *Tborp*, If a Clerk be instituted, but not inducted, he shall not have this Writ of Right of Advowson. 38 Ed. 3. 9. a.

(c) In this Writ the Summons shall be made on the Glebe, and the Glebe shall be taken into the King's Hands at the *Grand Cape*. 11 H. 6. 3, 4.

And

31 H. 6. 3. a. And when a Parson sueth in the spiritual Court for Tithes, which do amount E
unto the fourth Part of the Advowson, against the Parson of another Parish ;
then that Parson who is sued in the spiritual Court may purchase a Writ which
is called *Indicavit* ; which Writ is a Prohibition, and shall be directed as well
unto the Judge of the Court as unto the Party, that they do not proceed in
the Plea, &c. And then the Patron of that Parson who is so prohibited by
the *Indicavit*, may have and sue a Writ of Right of *Advowson of Dismes* ; and
the Form of the Writ is such :

*Command A. that he render to B. the Advowson of the Tithes of one third Part
of the Church of S. or of one fourth Part, or of a Moiety of the Church, &c.*

See 31. A. And this Writ is founded upon the Statute of *West. 2. c. 5.* in the End of
the Statute, and doth not lie of a less Part of the Tithes than of the fourth
Part of the Church. But it seemeth that at the Common Law, before the
Statute, a Writ of *Droit des Dismes* lay and was maintainable ; as, *Command,*
&c. *that he render, &c. the Advowson of the Tithes of one fifth Part, or of one
sixth Part of the Church, &c.* And that by the Statute of 18 *Ed. 3.* which is:
*Whereas Writs of Scire facias have been granted to warn Prelates and other reli-
gious Clerks to answer Dismes in our Chancery, and to shew if they have any
Thing, or can any Thing say, wherefore such Dismes ought not to be restored to
the said Demandants, and to answer as well to us as to the Parties of such
Dismes ; that such Writs from henceforth be not granted, and the Process hanging
upon such Writs be annulled and repealed, and that the Parties be dismissed from
the secular Judges of such Manner of Pleas : Saving to us our Right, such as we
and our Ancestors have had, and were wont to have of Reason.*

And by that appeareth, That before that Statute the Right of Tithes was F
determined in the King's temporal Court ; but the Statute hath now altered
the Law. And if a Parson be sued in the spiritual Court for the fourth Part
of the Tithes, for which he purchases *Indicavit, &c.* by which the Judges do
surcease ; if the Patron of the Parson which sueth in the spiritual Court hath
but an Estate in Tail in the Patronage, or for Term of Life, he shall not
have a Writ of *Droit des Dismes*, nor other Remedy by the Common Law,
to try the Right of the Tithes, for the Feebleness of the Estate. But if two
be seised of an Advowson, and unto the Heirs of one of them, they shall join
31 H. 6. 14. in a Writ of Right of Advowson for the Advantage of him who hath the
Fee-simple.

12 Ed. 4. 13 b. And also a Man shall not have a Writ of *Indicavit* before that the Party G
51. 34 Ed. 3. hath libelled against him in the spiritual Court. And he ought to shew the
Copy of the Libel before the *Indicavit* be granted : And the *Indicavit* doth
not lie after Judgment given in the spiritual Court.

(a) And a Writ of Right of *the Advowson of the Tithes and Oblations of one
fourth Part of a Church* lieth as well as of *the Advowson of the Tithes of one
fourth Part of the Church only.*

(a) And the Defendant shall have the View,
though there be but one Church in the same
Town. 38 *Ed. 3. 13. a.* But one shall not
have a Writ of Right of Advowson of the Tithes

of a Carve of Land, because it does not thereby
appear, whether it be of the Value of a fourth
Part of the Church. 18 *Ed. 2. Brief 825.*

- I If one be Parson imparfonee, and another be Vicar in the same Church, and one of them be impleaded of the fourth Part of the Tithes of the Parsonage, and the other impleaded of the fourth Part of the Tithes of the Vicarage, they shall have several Writs of *Indicavit*, and their Patrons may have several Writs of Right of Advowson of the Tithes, &c. [31.]
- K And it appeareth in 13 H. 6. by the Opinion of *Fortescue*, that before the Writ of *Indicavit* lay of Tithes sued in the spiritual Court, there was no Writ of *Droit des Dismes* sued thereupon. But it seemeth against Reason; for the Writ of *Droit* of Tithes lay as well for the Patron, as the *Indicavit* lay for the Parson.
- B And in 31 Ed. 1. it appeareth that a Man shall have a Writ of Right of *the Moiety of an Advowson*, where an Advowson is partible betwixt two Coparceners, and one of them is disturbed by a Stranger.
- But the Writ of Right of *the Advowson of a Moiety of a Church* lay where two Coparceners do present two Parsons to one Advowson, &c. As there are in some Churches two Parsons, &c.
- C And a Writ of Right of Advowson lieth of *the Advowson of a Vicarage, or Prebend, or Chapel*, and such like, as well as of *the Advowson of a Church*. And the King shall have such Writ as well as a common Person. Co. Lit. 17. b.
- D shall not tender a Demy-mark against the King to inquire of the Seisin alleged in the King's Count or Declaration, as he shall in case a common Person bring the Writ. Neither shall a Man have final Judgment against the King, although it be after the Mife joined betwixt the King and the Tenant. Ibid. 294. b.
- E And a Man shall have a Writ of Right of Advowson of a Chapel which is a Donative, as well as he shall have if it were presentable, to the Ordinary.

Assise de Darrein Presentment.

F THE Form of the Writ of *Darrein Presentment* for a common Person is such :

The King to the Sheriff, greeting: If A. shall make you secure, &c. then summon, &c. twelve free and lawful Men of the Neighbourhood of B. that they be before our Justices, &c. ready to recognize by Oath what Patron in time of Peace presented the last Parson, who is dead, to the Church of C. or the last Vicar, who is dead, to the Vicarage of N. which is vacant, as it is said, and the Advowson whereof, he the same A. says, belongs to himself; and in the mean time let them view that Church, and cause their Names to be impanelled, and summon B. who doth force him of that Advowson, that he be (a) then there to bear the Recognition:

4 Inst. 180.
 Note, That upon *Quis advocatus*, &c.
 20 Ed. 3.
Darrein Presentment 13.
 per Wilby,
 and 9 Ed. 2.
 Ibid. 17. If the Assise find
 Ibid. 4. acc'

Title for a Stranger not named in the Writ, a Writ to the Bishop shall be awarded for him; and therefore one cannot make Title to a Presentment in time of War. 7 Ed. 2. *Dar. Presentment.* 26 Ed. 3. 41.

(a) Note; The Party is to be summoned at this Action he shall not vouch any but him who the Church. 11 H. 6. 4. *per Martyn*; and in is Party to the Writ. 21 H. 6. 50. e.

And

And have you there the Summoners and this Writ. Witnesses, &c. But for the King the Writ is; *The King to the Sheriff, greeting: Summon by good Summoners twelve free, &c.* and shall not say, *If the King shall make you secure, &c.* because the King shall not (a) find Pledges to sue an Action, for he shall not be amerced, &c.

West. 2. c. 5. (b) And a Man shall have Assise of *Darrein Presentment*, although he nor G
his Ancestors do present to the last Avoidance: As if the Tenant for Life or
Bro. Present- for Years, or in Dower, or by the Curtesy, suffer an Usurpation unto a
ment 62. Church, &c. and die, he in the Reversion, who is Heir unto the Ancestor
who last presented, shall have an Assise of *Darrein Presentment*, if he be dis-
10 Ed. 3. turbed. But if a Man present, and then (c) grant the Advowson unto ano-
Dar. Present- ther for Life, and he suffer one Usurpation, or two, or three Usurpations;
ment 13. If now at the next Avoidance he in the Reversion shall not have an Assise of
that Tenant *Darrein Presentment*, if he be disturbed to present. And that appeareth by
by the Curtesy the Statute of *West. 2. cap. 5.* That the Remedy of the Statute is given for
or Tenant in the Heir of him who made the Demise, who is in Reversion, and not for the
Dower was Lessor himself. 18 Ed. 2. pl. 20. 6 Ed. 3. 41.
the last who presented, by
that the Heir shall have a Writ to the Bishop, and yet he cannot make Title by that Presentment: *Contra* in a
Quare impedit. And Seton gives the Reason, because he cannot convey by them. But if the Heir do alledge
the last Presentment in herself, and the Assise be to her by Default, and found *ut supra*, yet the Heir shall recover:
Contra, if they be at Issue upon that Presentment.

16 Ed. 2. And if a Man present unto an Advowson, and afterwards the Parson doth H
Darrein Pre- resign, or is deposed, and the Patron presents again, and is disturbed, he
sentment 20. shall have an Assise of *Darrein Presentment*; and the Form of the Writ shall
be, *What Patron in time of Peace presented the last Parson, who is dead, to the
Church, &c.* although that he resign, and be living. And the Form of the
Writ is to suppose that the Defendant doth desorce him of the Advowson,

(a) Note; As to Pledges, if a Writ be directed to a Sheriff of a Matter within a Franchise, the Plaintiff shall find Pledges to the Sheriff, and then the Sheriff shall send to the Bailiff of the Liberty, but the Bailiff shall not take Pledges; and if he does, the Sheriff shall be amerced, and a *Sicut alias* shall issue. 22 Aff. 3. 14 H. 6. 3. 21 H. 7. 14. pl. 22.

Note; He who shall not be amerced on a Nonsuit, shall not find Pledges, as the Plaintiff in a *Quid juris clamat*, or *Scire facias*. 11 H. 4. 7. 18 H. 6. 2.

Note; The Clause, *And have you there the Names of the Pledges*, is intended of the Plaintiff's Pledges; but if it be omitted, yet the Writ is good. 26 Ed. 3. F. Brief 898.

(b) See *Kitchin* 118. If the Husband seized in his Wife's Right present, and then the Wife dies, so that he is Tenant by the Curtesy, and then the Church becomes void again, the Husband

shall have an Assise, &c. But if Lessee for Years presents, and it is afterward confirmed to him for Life on the second Avoidance, he shall not have an Assise, because he is in of a new Estate.

(c) See 2 Ed. 3. 11. The Heir of the Grantee of a Reversion shall avoid this for a Purprise on the Tenant for Life; in a *Quare impedit* brought by *Stanhope* against the Bishop of *Lincoln*, this was denied by all but one. But see the contrary held by *Moyle* and *Prifot*. 34 H. 6. 26, 27 and so is 33 H. 6. 12.

Note; If a Feme Purchaser takes a Husband, who suffers an Usurpation, and the Husband dies, she is without Remedy. 1 Ed. 2. *Quare impedit* 43. Yet it seems if the Husband, and she being enseint, present, and after suffer an Usurpation, &c. she shall have a *Quare impedit*. 17 Ed. 3. 4. by *Shard* and *Thorpe*. See *Dyer* 259. pl. 1. and *post*. 34. S. that she shall have it.

and

and yet by his Count he counteth, that he or his Ancestors last presented unto the Advowson, by which he doth suppose that he is in Possession of the Advowson; and yet the same is good.

I If a Man do present unto an Advowson unto which he hath Right, and afterwards the Incumbent dieth, and a Stranger usurpeth, and presenteth unto this Advowson in the Time of War, and after that Incumbent dieth; now if he who hath Right do present again, and be disturbed, he shall have an Assise of *Darrein Presentment*, and this Presentment made in Time of War by the Stranger shall not grieve him.

And so if a Man present unto an Advowson, and afterwards the Incumbent (a) dieth, and another Ordinary doth present by Lapse another Incumbent, and after that Incumbent dieth; now the right Patron shall present, and if he be disturbed, he shall have an Assise of *Darrein Presentment*, notwithstanding the mean Presentments.

And so if the Guardian do present in the Right of the Heir, and the Incumbent dieth, the Heir shall present; and if he be disturbed, he shall have an Assise of (b) *Darrein Presentment*, although the Guardian did present the mean and the last Presentment. But if a Man present unto an Advowson, and after lease the same for Term of Years, and after the Church is void, and the Tenant for Years doth present, &c. and then the Incumbent dieth, and the Lessor presenteth, and is disturbed; it seemeth that he shall not have an Assise of *Darrein Presentment*, because the Tenant for Years did present in his own Right. But Tenant for Years shall have Assise of *Darrein Presentment*, if he have presented before; and so shall the Guardian of the Heir, if he have presented before.

K If a Man usurp upon an Infant, and present, which Infant hath the Advowson by Descent; and afterwards the Incumbent dieth, the Infant shall present; and if he be disturbed, he shall have an Assise of *Darrein Presentment*. But if the Infant purchase the Advowson, and present, and afterward the Church become void, and a Stranger present, and usurp upon the Infant, and then the Incumbent dieth, the Infant presents, and is disturbed by a Stranger; he shall not have (c) a *Darrein Presentment*, but shall be put to his Writ of Right.

Assise 87. 17 Ed. 3. Darrein Presentm. 9. Shard; she hath no other Remedy but a Quare impedit.

(a) *Nota bene*; 20 Ed. 3. pl. 12. 7 Ed. 4. 20. 22 Ed. 4. 9. *contra per Brian*, &c. 6 Ed. 2. pl. 16. 30 Ed. 3. pl. 13. *contra* of Tenant in Dower. 5 H. 7. 10. b. 15. 14 Ed. 3. *Darrein Presentment* 34.

(b) *Note*; The Issue in Tail may maintain an Assise of *Darrein Presentment*. 46 Aff. 4. *Quare* of Tenant in Dower *supra*. 5 H. 7. 10, 15. 14 Ed. 3. *Darrein Presentment* 34.

Sir *W. W.* If the Bishop present by Lapse, pending which the Church avoids, he in Rever-

sion shall not have a *Quare impedit*, but *Darrein Presentment*. 46 Aff. 4.

Note; The Statute *Westm.* 2. gave a *Darrein Presentment* to him in Remainder on a Presentment by the Tenant in Dower, by the Curtesy, &c. *Contra*, it seems where the Ancestor of him in Remainder had not presented. *Quare* 20 Ed. 3. *Darrein Presentment* 13. And Mention is to be made of his Ancestor's particular Presentments in setting forth his Title.

(c) See 35 H. 6. 63. *Post*. 34.

(a) If the Husband and Wife present unto an Advowson in the Right of the Wife, which is appendant unto a Manor of the Wife's, and after the Husband alien one Acre, Parcel of the Manor, with the Advowson in Fee, unto a Stranger, and dieth, and the Stranger presents, and alieneth the Acre unto another in Fee, saving the Advowson unto himself, and then the Church voideth; the Wife shall present; and if she be disturbed, she shall have an * Assise of *Darrein Presentment*, because the Advowson was severed from the Acre; but if the Advowson were appendant to the Acre, then the Wife ought to recover the Acre before she present to the Advowson.

20 Ed. 2. And Assise of *Darrein Presentment* doth not lie for one Coparcener against A
Dar. Presentm. the other, as appeareth *M. 20 Ed. 3.* and *M. 15 Ed. 3. pl. 10. Post. 34. N. P.*
11 and 13.
but they seem to make a Difference, when the Disturbance is before the Composition to present by Turns, and when after.

33 H. 6. 32. And if one Defendant die in a *Darrein Presentment*, the Writ is good by the B
The Church Survivor against the other.

never is litigious betwixt Parceners; for if they cannot agree, the Ordinary ought to admit the Presentee of the eldest; but contrary of Joint-tenants. If a Disturber present unto an Advowson, and the Patron bring an Assise C
of *Darrein Presentment*, and pendent the Writ the Incumbent dieth, if the Disturber presenteth another Incumbent and dies; yet the Patron shall have an Assise of *Darrein Presentment* upon the first Disturbance against the Heir of the Disturber, *per Journeys Accounts*; and so if the Disturber present two or three Times within the six Months, the very Patron shall have an Assise of *Darrein Presentment* upon the first Disturbance.

34 Ed. 3. 16. 12 R. 2. Counterplea de Vouch. 433.

This Proviso is taken away by West. 2. 29. *And it was provided before the Lord the King, the Archbishops, Bishops, Earls D
and Barons, that for the future no Assise of Darrein Presentment be taken of Prebendal Churches, nor of Prebends.* Hil. 19 H. 3. Vide post. 35. R.

(b) *Quare impedit.*

THE Form of the Writ of *Quare impedit* for the King in the Right of E
the Crown is such:

The King to the Sheriff of Lincolnshire, greeting: Command W. Archbishop, and R. that they permit us to present a fit Person to (c) the Church of W. which

(a) See *Post. 34. 17 Ed. 3. 3. 22 Ed. 3. 6.* and *Co. Lit. 333. a. 363.*

* *Post. 36. F. 22 Ed. 3. 6. 17 Ed. 3. 3.*

(b) Note; The Summons in this Writ shall not be made at the Church, as it shall be in a Right of Advowson, for in this Writ the Advowson is not demanded, but the Disturbance is to be punished for the Damage done to the Person, by *Danky* and other Justices. 11 H. 6. 3.

(c) Note; There needs not the Name of the Saint, as, *ad Ecclesiam de Sancta M. de W.* ex-

cept there be more Churches in the same Vill. 9 *Eliz. Dyer* 259. 13 H. 4. 872.

Note also; A Writ brought by the King or Queen is not *unde queritur*, that the Defendant *injuste, &c.* 18 Ed. 3. 1, 2. (as it is in the Case of a common Person); also if the Words *ut dicitur* be omitted, the Writ is good; yet see 38 Ed. 3. 31. That in the King's Case it shall be *ut dicitur*, but in that of a common Person, in all Writs it shall be *ut dicit*, and if it be *ut dicitur*, the Writ shall abate. 17 Ed. 3. 50, 74.

is void, and belongs to our Gift, and whereof W. Archbishop, and R. unjustly binder us, as it is said: And unless, &c. summon, &c. the aforesaid Archbishop and R. that they be before us, &c. or before our Justices of the Bench, &c.

Vide Fitz. Nat. Brev. 25. Where a Man may have an Assise of Dar- Quare impedit.

rein Presentment, there he may have a Quare impedit, but not *contra*. C. 5 Part 102. In a dit, the Writ was to the Church; and the Count of the Advowson of two Parts.

For the King may sue this Writ, and every Writ, in what Court he will.

F And if the King hath Title to present unto an Advowson, by reason of the Lands and Temporalities in his Hands, of a Bishoprick, or Abbey, or Guardianship of an Heir, then the Writ is:

The King to the Sheriff of Lincolnshire, greeting: Command W. Archbishop, that he permit us to present a fit Person to the Church of W. which is void, and belongs to our Gift by reason (a) of the Bishoprick of Canterbury being lately vacant and in our Hands; and whereof the same Archbishop unjustly binders us, as it is said, &c.

And if it be unto the Prebend, then thus: *To the Prebend of I. in the Church, &c. which is void, &c. by reason of the Bishoprick, &c.* And if it be by reason of Ward, then the Writ shall be; *Which is void, and belongs to our Gift by reason (b) of the Wardship of the Land and Heir of T. some time Earl of A. deceased, who held of us in Chief, being in our Hands; and whereof the aforesaid, &c. unjustly binders us, &c.*

And if it be by reason of Wardship by occasion of another Wardship, then the Writ is; *Which is void, and belongs to our Gift by reason of the Wardship of the Land and Heir of J. T. being in the Hands of Lord E. lately King of England, our Father, by reason of the Wardship of the Land and Heir of S. of C. some time Earl of Gloucester, deceased, of whom the same J. held his Land by Knight's Service, being in the Hands of our same Father; and whereof the same, &c. unjustly binders us, as it is said.*

G And by the Register the King shall join with another Person in a *Quare impedit*; and the Form of the Writ is such (c):

The King to the Sheriff, &c. Command R. of C. that justly, &c. he permit us and P. of T. to present a fit Person to the Church of K. which is void, and by reason of the Wardship of the Land and Heir of I. who was the Wife of T. of N. who held of us in Chief, deceased, being in our Hands, belongs to the Gift of

(a) *Ratione Episcopatus*, i. e. *Temporalium Episcopatus*. 15 Ed. 3. F. Brief 679. *ratione Abbatiae vel Episcopatus*. 39 Ed. 3. 21. But if it be by Alienation without Licence, the Writ is general, and the Count special. 14 Ed. 3. *Quare impedit* 54.

(b) A Writ was brought by the Queen in the like Case, *Ratione minor' atal' I. filii & haredis S. in custodia Regine exister' de qua preced' S. Terram sua' tenuit in Capite*, where by the Count it appeared, that he held of one G. who was the Queen's Ward, and yet held good. 24 Ed. 3. 54.

(c) It is held by sense, there is a Diversity, viz. Where the King has Part of a Thing *ratione Prærogative*; there, if it be intire, he shall have the whole, as if one of the Obligees be *Felo de se*, or outlawed, the King or his Assignee shall have the Action sole; but if he has Title to a Parcel or Part, by another, there the King may join, as if an Obligation be made to a Customer for Customs, &c. there the King and the Customer shall join. See 8 Ed. 1. 4. a. 24. b. 19 H. 6. 47. a. 10 H. 4. 3. *Dyer* 95. *Post.* (or *Lib. Parliament.*) 288.

us and of him the said P. of T. and whereof the aforesaid, &c. unjustly hinders us and the before-mentioned P. of T. &c.

11 Ed. 3. Br. Quare imp. Presentment alone, and alone shall have the Action. But methinks that it stands with Reason, that the King and the other join; as in a popular Action the Party shall sue for the King and for himself, and the Words of the Writ are, *Who sues as well for the Lord the King as for himself*, &c. and that in an Action of Debt, &c. and by the same Reason the King may sue for himself and for the Party. And the common Experience is, that a Man shall hold Lands in common with the King, and also Chattels: And by the same Reason they may have the Presentment or Advowson in common.

See 20 H. 4. 3. contr. and 9 H. 6. 60. contr. but not jointly.

And if a Man be disturbed to present unto a Parsonage, then the Writ shall be, (a) *Command*, &c. that he permit him to present, &c. to the Church, &c. for the Word *Ecclesia* is always intended a Parsonage. And if it be a Vicarage, then the Writ is, *That he permit him to present to the Vicarage*. And if it be a Prebend, then, *to the Prebend*; and if a Chapel, *to the Chapel*; and so he ought to (b) name the Advowson as it is, &c. 8 H. 6. 22.

[33.] A Man shall not have a *Quare impedit de Advocat' medietatis, nec de medietat' Advocacionis*, &c. And if one Man hath the Nomination unto an Advowson, and another hath the Presentation, if he name his Clerk, and he who hath the Presentation present (c) another Clerk; he which hath the Nomination shall have a *Quare impedit*, and the Writ shall be, *That he permit him to present*, &c. and in his (d) Count he shall set forth the special Matter, and it shall be good.

14 Ed. 4. 2. 31 Ed. 3. 185. 2 R. 3. Quare impedit 102. 1 H. 5. 1, 2. 17 Ed. 3. 12. 44 Ed. Quare impedit 76. 21 H. 6. 17. intra C. D. H.

(e) And so if a Man hath a Chantry, which is a Donative by Letters Patent, and he give the same unto a Clerk, who is disturbed by another, or another doth present to his Chantry, or giveth the same by Letters Patent; he which hath Right shall have a *Quare impedit* of that Donative; and the Writ shall be, *That he permit him to present*, &c. to the Chantry, &c. and in the Count he shall set forth the special Matter. See 14 H. 4. 11.

(a) And Note; Such Writ was at the Common Law. 14 H. 3. *Quare impedit* 183. *ad Capellam*. 2 H. 3. *Grants* 89. *ad Vicariam*.

(b) In a *Quare impedit presentare ad Ecclesiam*, it is a good Plea to the Writ, that it is but a Chapel; for *Ecclesia* shall be intended a Parish Church. 5 Ed. 3. 60. 22 Ed. 3. 2. a. 12. a. 8 H. 6. 32. a. 37. a. 13 H. 4. *Brief* 870 & *infra* E. F.

(c) See accordingly 1 H. 5. 1, 2. 4 Ed. 3. 69. 21 H. 6. 17. a. and he shall have a Writ to the Bishop to admit the Presentee whom he has named to another, whether the Writ be brought against him who had the Presentation, or against a Stranger; yet see 24 Ed. 3. *Quare impedit* 27. and 2 R. 3. *Quare impedit* 102. that it lies not for him who has only the Nomination.

(d) See accordingly 22 Ed. 4. 22. a. 14 Ed. 4. 2. b. and 14 H. 4. 11. the Writ *Quod permittat nominare* was abated by Award in the like Case.

(e) A *Quare impedit* of a Chantry ought to shew in what Church or Chapel the same is. 12 H. 4. 19. See *Lib. Intr.* 499.

A *Quare impedit* lay of a Chapel at Common Law. 24 H. 3. *Quare impedit* 183. And so it did of a Prebend. 13 R. 2. *Brief* 643.

Note; A *Quare impedit* of a Prebend must be brought in the County where the Cathedral Church is, and not in the County where the Body of the Prebend lies. 15 Ed. 3. *Brief* 235, 643.

- D** And if a Bishop be disturbed to present where he ought to make Collation, the Writ shall be, *That he permit him to present, &c.* and he shall count upon the Collation. (a)
- E** (b) And so if the King be disturbed to collate by his Letters Patent unto his free Chapel, he shall have a *Quare impedit*, and the Writ shall be, *That he permit him to present, &c. to the Prebend* in his free Chapel, &c.
- F** And a *Quare impedit* lieth of a Priory, or of an Abbey; and the Writ shall be, *That he permit him to present to (c) the Priory or Abbey, &c.* See the Book of Entries 59. and 18 Ed. 3. *Quare impedit* accordant 151 ^{14H.4.36.b.}
- G** And there is another Form of Writ, *That he permit him to present to the Church of the House of Saint Martin of Bristol, which is void, &c.* and so of an Hospital, and the like. *Vide Lib. Entr.* 506.
- H** And a Man shall not have a *Quare impedit* if he cannot alledge a Presentment in himself or in his Ancestors, or in another Person, from whom he claimeth the Advowson, and that in his Count, if it be not in special Cafes: As if a Man at this Day erect a Church parochial by a Licence of the King, or other Chantry, which shall be presentable, &c. if he be disturbed to present to the same, he shall have a *Quare impedit*, without alledging of Presentment in any Person, and shall count upon the special Matter. ^{21 Ed. 4. 2. 3. 16 H. 7. 8. Keble ac.}
- I** (d) And if a Man doth recover an Advowson against another in a Writ Post. 36. of Right, when the Church voideth he shall present, and if he be disturbed, he shall have a *Quare impedit*, and alledge the Presentment in him against whom he recovered, without alledging any other Presentment. And a Man shall have a *Quare impedit*, and alledge a Presentment by his Proctor, and it shall be good, without alledging a Presentment in himself: *Quod vid.* 17 Ed. 3. ^{Post. 35. O.}
- K** (e) And if an Abbot hath been Parson imperfonce Time out of Mind, and afterwards the Abbey is disturbed, he of whom the Advowson is holden shall present, and if disturbed, shall have a *Quare impedit*, without alledging of any Presentment in the Count, but shall shew the special Matter. ^{C. 2. Part 47. b. ac.}
- L** (f) If Coparceners make Partition to present by Turns, and so do, and afterwards the younger Sister die, her Heir within Age, and in Ward and afterwords the younger Sister die, her Heir within Age, and in Ward ^{Ant. 32 G. 22 Ed. 4. 9.}

(a) See 16 Ed. 3. Brief 660. *Raft. Ent.* 501. 17 Ed. 3. 64.

(b) See 13 H. 4. Brief 870. where *Ecclesia* shall be intended a parochial Church. See 16 Ed. 3. Brief 660. *ant. H.*

(c) Note; A Priory may be Parochial and Presentative, and then the Writ may be, *Ad Ecclesiam.* 13 H. 4. Brief 870. 18 Ed. 2. Brief 828. and *Trespass* 237.

(d) See 14 Ed. 2. *Quare impedit* 171, 172. where he may have a *Scire facias* on the Judgment for the Disturbance, but that on the Judgment in a Writ of Right, he had Seisin delivered by the Sheriff; yet for that he cannot have Seisin of the Church without a Presentment; when the Church avoids, he shall have

a *Scire facias* for the Presentment. 15 Ed. 2. *Quare impedit* 172.

(e) In a *Quare impedit*, the Plaintiff ought to declare that the Presentment was made in Time of Peace. 18 Ed. 2. *Quare impedit* 175. *ant.* 31.

(f) See 21 Ed. 3. 32. If the King has an Advowson in Common, or with another, as by reason of Nonage of an Infant who has Title to present by Turn, or otherwise, the King by his Prerogative shall have the Presentment on every Avoidance, as long as any of the Lands are in his Hands. See 21 Ed. 3. 27. The King made Title only to the fourth Avoidance by Reason of Wardship of the Parcener, after Partition made.

31 Ed. 3. to the King, and afterwards the Church void two or three Times during the
 Quare Impe- Nonage of the Heir, who is the King's Ward; the King shall present, and
 dit 2. if he be disturbed, he shall have a *Quare impedit* alone, as it appeareth *Mich.*
 38 H. 6. 9. 22 Ed. 4. But, saving the Opinion of the Book, I conceive the Law to be
 Dyer 322. otherwise; because the Inheritance of the Presentment is (a) several, &c. M
 21 Ed. 3. (b) And if two Sisters be, and have an Advowson which becometh void,
 Br. Quare Im- the eldest Sister shall have the first Presentment; and so the Husband of the
 pedit 73. eldest Sister (if he be Tenant by the Curtesy of the Advowson) shall have the
 first Presentment; and the Tenant in Dower shall have but the third Present-
 ment, &c.

16 H. 7. 8. (c) If the King have an Advowson in Fee, which voids, and during the N
 3 Cro 196. Avoidance the King granteth the Advowson in Fee, the King shall not pre-
 18 Ed. 3. 22. sent to this Avoidance: But if the King have an Advowson by reason of the
 24 Ed 3. 29. Temporalities of a Bishop, and during the Avoidance the King restore the Bi-
 39 Ed. 3. 21. shop the Temporalities, yet he shall present unto the Advowson, and not the
 See 34 P. Bishop, for this Avoidance.

(d) If the Heir sue his Livery and hath it, yet the King shall present unto O
 an Advowson which became void during the Time that the Advowson and
 Land were in the King's Hands. (e)

24 H. 8. (f) If a Man be seised of an Advowson in grofs or in Fee appendant unto P
 Dyer 4. C. 3. a Manor, and the Advowson void, and he dieth, his Executor shall present,
 Part 3. and not the Heir, (g) because it was a Chattel vested and severed from the Q
 50 Ed. 3. 26. Manor. And if a Man be disseised of a Manor unto which an Advowson is
 ac. Vid. after appendant, and the Advowson become void, the Disseisee may present and
 34 K, and have a *Quare impedit*, although he hath not entered into the Manor. But if R
 35 A. the Bishop die, and the Advowson happen void before his Death, the King
 29 Ed. 3. 5. shall present unto the same by reason of the Temporalities, and not the Bi-
 27 Ed. 3. 89. shop's Executors. 8 Ed. 2. Presentment 10. 39 Ed. 3. 21.

2 H. 4. 19. (h) So if a Man have a Manor unto which an Advowson is appendant in S
 40 Ed. 3. 14 Fee, and the Church void in the Father's Time, and the Father die, and
 after 44 K, his
 143 E.

(a) But if the King's Tenant dies, having
 Issue three Daughters under Age, the King
 shall have all the Presentments. See 31 Ed. 3.
Quare impedit 100 38 H. 6. 9. 22 Ed. 4. 9.
 20 Ed. 3. *Quare impedit* 65. 45 Ed. 3. 12.
 34 H. 6. 40
 (b) Vide *Peff.* 34. (O, P) 5 H. 5. 16.
 18 Ed. 3. 22.

(c) *Vide contra.* Except there are special
 Words of the Avoidance. 16 H. 7. 8. *Dyer*
 282. 302. a. 348. a. and See accordant
 18 Ed. 3. 58. a but contrary in the Case of a
 common Person, 11 H. 4. 54. b. and an A-
 voidance fallen is not grantable by a common
 Person. *Dyer* 283, 348. See *Stamf. Prerog.* 44.
 46 Ed. 3. *Grants* 50. 18 Ed. 3. 22, &c. in
Marg.

(d) *Note*; If the King be seised of a Manor
 to which an Advowson is appendant, whereto he

has no Right of Seisin, and afterwards there is
 an *Ouster le main cum exitibus*; if an Avoidance
 happens in the mean Time, and the King has
 presented, the Incumbent shall not be removed;
 but if he has not presented, he shall have the
 Avoidance. See 5 Ed. 3. 6. 4 Ed. 3. 2.
 18 Ed. 3. 21. 24 Ed. 3. 28, 29. 27 Ed. 3.
 81, 89. 39 Ed. 3. 21.

(e) See 18 Ed. 3. 22. 46 Ed. 3. *Grants* 50.
 6 Ed. 2. *Presentments* 9.

(f) See 21 H. 7. 21. 44 Ed. 3. 3. 21 H. 6. 9.
 33 H. 6. 33. 9 Ed. 4. 39.

(g) See 9 H. 6. 33. 4 Ed. 3. 2. *contra.*
 39 Ed. 3. 21. *contr. sed* 44 Ed. 3. accordant.

(h) *Note*; Though the six Months pass in
 the Father's Life-time, the King shall have the
 Presentment against the Bishop, if the Church
 be not full. 18 Ed. 3. 21. a. 29 Ed. 3. 8.
 Where the King grants the Advowson to A.
 till

his Heir in Ward to the King, the King shall have the Presentment. 18 Ed. 3. 21. 27 Ed. 3. *Estoppel* 240. *Contr.* 39 Ed. 3. 21.

T (a) Guardian in Socage of a Manor unto which an Advowson is appendant, and the Church void, the Heir shall present, and not the Guardian, because he cannot account for the same.

V If the King grant unto an Abbot and his Successors, that the Monks shall have the Temporalities during the Vacation; now if the Advowson happen 17 Ed. 3. 51. void during the Vacation, the Monks shall present to the same. *Mich.* 30 Ed. 3.

A The Presentation to the Vicarage doth of common Right appertain unto the Parson; but he may grant the same to another by Assent of the Patron Post. 34. and Ordinary.

The Heir in Tail shall not have a Presentment fallen in the Life of the [34]
B Tenant in Tail, but the Executor of Tenant in Tail. (b) So the Termor shall have the Presentment which happeneth during the Term, although he hath not presented during the Term to the Advowson, &c.

C (c) The King may repeal his Nomination or Presentation, but a common 7 H. 4. 32.

D Person cannot do so. And the King shall have a Writ unto a Bishop to induct one into a Prebend which the King hath given unto him; and to give 25 Ed. 3. 47. Robert de Kelsey's Case.

E And a Man shall have a *Quare impedit* of an Hermitage, and a Writ to put him into corporal Possession.

F (d) If the King recover by *Quare impedit*, and afterwards ratify the Estate of the Incumbent; yet at the next Avoidance the King shall present, because his Recovery and Judgment for him was not executed. T. 9 Ed. 3. In a free Chapel of the King, where the Dean ought to give the Prebends, if he do not collate within six Months unto them, then the King shall present by Lapse to them as Ordinary.

G If an Advowson be void by six Months, at which Time the King is seized of the Temporalities of the Bishoprick, the King shall present to this Advowson, as the Bishop should do; and the King shall have a *Quare impedit* of the Sub-Deaconry of *York*, which voided when the Temporalities of the Archbishoprick were in the King's Hands; and the Writ shall be, *That he permit him to present*; and yet the King shall give this Sub-Deaconry by his Letters Patent.

till his full Age, and the Church avoids, during the Term, and afterwards the Heir presents, and comes of full Age, before the Church is full, the King shall have the Presentment.

(a) It seems, the Presentment ought to be in the Name of the Heir, and yet a Guardian in a *Quare impedit* against him may make Title against the Stranger in Right of the Heir, and also have a Writ to the Bishop thereupon, but he cannot maintain a *Quare impedit*. 29 Ed. 3. 5. 14. 22. 27 Ed. 3. 89. a. 8 Ed. 2. *Presentment* 10.

(b) See 9 Ed. 3. 10. 19 H. 6. 33. *Perk* 21.

(c) The King may repeal his Presentment, although the Clerk be instituted, provided he be not inducted. 25 Ed. 3. 47. a. 38 Ed. 3. 49. But a common Person cannot repeal his Presentation. *Dyer* 292 a.

A Patron nevertheless may present several Persons accumulatively, and there shall be Recorn for pleasing the Bishop. *Lindwood de Jure Patronatus, cap. 1.* See 14 Ed. 4. 2.

(d) See a good Case that accords herewith, 18 Ed. 3. 21. and see 9 Ed. 3. 20.

Where

31 Ed. 3. Where Partition is made betwixt Coparceners by Licence of the King of H an Advowson in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next Turn dieth, her Heir within Age and in Ward to the King, and the Church void; the King shall have a *Scire facias* against the other Coparcener, &c. upon that Partition, and yet he was a Stranger to the Partition.

5 Ed. 3. Qu. (a) If two Coparceners make Partition to present by Turns, although that I imp. 39. one of the Coparceners do afterwards usurp upon the other Coparcener, and presents in her Turn, that Presentment shall not put her out of Possession, but she shall have her Turn when it falls again, and shall have a *Quare impedit*, or a *Scire facias* upon the Composition if it be upon Record, if she be disturbed for to present, &c.

50 Ed. 3. 16. (b) If a Bishop make a Collation, and before Induction or Installation K 31 Ed. 3. 4. dieth, and the King seiseth the Temporalties; he shall have this Presentment, because that the Church is not full against the King, until the Parson or Prebend be installed or inducted.

24 Ed. 3. 33. (c) If a Parson have a Parsonage, and afterwards doth take another Bene- L fice without Dispensation; now the first Benefice is void, and the Patron thereof may present, for this Avoidance is called Cession.

Br. Present- (d) If in Time of Vacation of an Abbey or Priory, a Church happen M ment al Eg- void, which is of the Patronage of the Abbot or Prior, and a Stranger doth life 46. usurp and present thereunto; this Usurpation shall not prejudice the Successor*, but at the next Avoidance of the said Church he may present, and have a *Quare impedit*; but otherwise it is if an Usurpation shall be had in the Time of his Predecessor, for that shall put the Successor out of Possession, if the six Months be past.

* 24 Ed. 3. 26. See Co. Lit. 360. 24 Ed. 3. 26. If a Vicarage happen void, and before the Parson present, he is made a N Bishop, &c. yet he shall present unto this Vicarage, because it was a Chattel vested in him.

(e) The Founder of a Priory shall have a *Quare impedit* against the Sub- O prior and the Convent, if they disturb him to present to an Advowson which belongeth to the House, if it void during the Vacation, where the Founder ought to have the Temporalties during the Vacation. P. 9 Ed. 3.

39 Ed. 3. 21. Ant. 33 N. If a Man traverse an Office found of a Manor unto which an Advow- P son is appendant, and upon the Traverse (f) the King leaseth the Manor

(a) See 12 Ed. 3. 9. 13 H. 8. 14. 22 Ed. 4. 9. 27 H. 8. 111.

(b) See 38 Ed. 3. 3, 4. And so it is of his Tenant who dies before his Clerk is inducted. 38 Ed. 3. 9. a. If the King has a Presentation *pro hac vice*, and his Clerk dies after Institution, and before Induction, the King shall present. 18 Eliz. Dyer 348.

See *per W. W.* 22 H. 6. 27. 21 Ed. 4. 34. 38 E. 2. 41. 11 H. 4. 91.

(c) See 4 Co. 74. b. 11 H. 4. 37, 60, 91. 5 Ed. 3. 9.

(d) See Co. Lit. 263. b. West. 2. c. 5.

If a Parson be admitted and instituted by the

Bishop, he is Parson against every common Person before Induction, and has the Cure of Souls, and shall have the Profits before Induction. 31 Ed. 3. 4. by *Kirton and Moreton.* (See *Quare impedit per W. B.*)

(e) The Patron of an Abbey presentative brought a *Quare impedit* against the Superior (Subprior) and Convent. 11 Ed. 3. *Quare impedit* 157. 18 Ed. 3. 15.

(f) For in that Case the Lease amounts to a Restitution, but if the King seizes a Priory alien, and leases the Priory to Farm during the War, without mentioning the Advowson, the King shall have it. 29 Ed. 3. 18. (or 98.)

unto him who tendered the Traverse without mentioning the Advowson, and afterwards the Church void, he who tendered the Traverse shall have the Presentment, if the Traverse be found for him. 5 Ed. 3. 6.

Q If a Feme be assigned the third Part of a Manor unto which an Advowson is appendant in Dower, she shall have the third Presentment.

R If the Patron be outlawed in Trespass, and the Church void, the King shall present, because of the Outlawry (a). 14 H. 6. 24. Newton, Feme is disturbed and taketh Husband, the Church void, the Husband presents, the same shall vest the Right in the Wife.

S (a) (b) If a Feme purchase an Advowson, and take a Husband, and the Church void, and the Stranger doth present, and the Husband suffer an Usurpation, &c. by this Usurpation the Wife shall be out of Possession after the six Months past; and she shall be put to her Writ of Right of Advowson, if she have presented before; and if she have not presented, she is without Recovery: But otherwise is it, if the Feme shall have an Advowson by Descent or by Course of Inheritance.

T If an Infant or a Feme Covert do not present within six Months, the Bishop may present for Lapse (c).

U (c) One Joint-tenant, or Tenant in common, shall not have a *Quare impedit* for the Advowson which they have in common, or in Jointure, if one of them present solely against his Companion. But if two (d) Coparceners cannot agree in the Presentment, the eldest Sister shall have the first Presentment, and he who hath her Estate shall have the first Presentment; and if he be disturbed by the other Coparcener, she or he who hath her Estate shall have a *Quare impedit* against the other (e) Sister; and the Coparceners, and those who have their Estates, shall present as Coparceners ought to do, *scil.* the eldest first, and then the middlemost, and then the third, and then the fourth, and so as they shall be of Age, &c. 35 H. 8. Dyer 55. Advowson descends to two Coparceners, one of full Age, and the other within Age, the Guardian

marieth the eldest, the Church void, he presents in both their Names, the youngest cometh of Age. Some are of Opinion, that if they do not agree the eldest shall present, and it shall be her Turn: Others contrary. *Qu.*

X If an Infant have a Manor unto which an Advowson is appendant, and suffereth a (f) Usurpation when the Church becometh void, and afterward at full Age grants the Manor in Fee, and afterwards the Church become void; the Infant shall present, and not the Feoffee of the Manor, for the Advowson was severed by the Usurpation; and yet the Infant may present to the same. Post 35. M. [35.]

A If the King's Tenant hath Title to present unto an Advowson, which is void, and the six Months pass; and afterwards the King's Tenant dieth before 18 Ed. 3. 21. Ante 33. R.

(a) See 26 Aff. pl. 71. 4 Ed. 6. 58. 35 H. 6. 63.

(b) 1 Ed. 2. *Quare impedit* 43. ante 31. I. Weß. 2. c. 5. 19 H. 6. 40. 22 H. 6. 26. 43 Ed. 3. 15. 22 Ed. 4. 9.

(c) *Vide post.* 35. 6 Ed. 4. 10. 27 H. 8. 11. 34 H. 6. 40.

(d) See 9 Eliz. 333. a. Bro. Presentment al Eglish 53, 34, 56, 40.

(e) See *Dozor* and Student 116. b. ante 33. B.

(f) See accordant adjudged, 16 Ed. 3. F. *Quare impedit* 67. But *contra* by Danby, 33 H. 6. 13. in the like Case. Yet if the King was so seized, and granted the Manor *cum Advocatione*, at the next Turn the Grantee shall present; *per Cur.* For it was not made disappendant by the King's Usurpation.

See 16 Ed. 3. Bro. Presentment 60. That an Infant may present.

the Bishop presenteth for Lapse, his Heir within Age, and in Ward to the King, the Bishop shall not present for Lapse, but the King shall have this Presentment by reason of the Wardship. *P. 18 Ed. 3.*

If Tenant in Tail of a Manor, unto which an Advowson is appendant, **B** discontinue the Manor in Fee with the Advowson, and after the Discontinuor granteth the Advowson unto another in Fee, and afterwards doth re-infeoff the Tenant in Tail of the Manor, who dieth seiled of the Manor; his Heir shall present unto the Advowson, when it shall happen void: And if he be disturbed, he shall have a *Quare impedit*, because he is remitted unto the Manor, and hath not Remedy to come to the Advowson. *29 H. 6. Quare impedit 79.*

The Defendant in a *Quare impedit* may sue a *Quare impedit* against the **C** Plaintiff, if his Clerk be not admitted nor instituted. And if the Plaintiff's Clerk be instituted and inducted pendent the Writ, it shall not abate the Plaintiff's Writ; but in that Case if the Defendant recover against the Plaintiff, he shall avoid the Plaintiff's Clerk; and so if the Defendant's Clerk be admitted pendent the Writ against him, if the Plaintiff recover, he shall avoid the Defendant's Clerk: But if the Clerk of the Defendant were admitted and instituted at the Time of the Purchase of the Writ, and the Plaintiff purchase the Writ only against the Patron, not naming the Incumbent; although the Plaintiff recover, he shall not avoid the Defendant's Clerk, because he might have named him in the *Quare impedit*.

If a Stranger do present unto an Abbey or Priory which is eligible by the **D** Convent, and his Clerk be instituted and inducted; *quare* how this Wrong may be after redressed and reformed. See *22 H. 6. 25, &c.*

10 Eliz. 11. If a Man have a Chapel or Chantry which is donative by Letters Patent, **E** Hare's Case, and he (a) once present unto the Ordinary his Clerk to the Chantry, he shall never after collate, but ought to present unto the Bishop; and if he do not present within six Months, the Ordinary shall have Advantage of the Lapse. See *22 H. 6. 26, &c.* he ought to be inducted.

A Presentment made by a Stranger unto an Advowson which is appropriated unto an Abbey, be the Presentment in the Time of Vacation, or in the **F** Time of the Abbot, is void, although that the Clerk be instituted and inducted: But if the Abbot himself present unto the (b) Bishop his Clerk to an Advowson which is appropriate to his House, this Presentment doth disappropriate the Advowson, and make it presentable after; and if he do not present within six Months after every Avoidance, the Bishop shall present for Lapse. The Bishop ought to present his Clerk for whom it is first found by a *Jure Patronatus*. See *34 H. 6. 39.*

Post. 48. H. The Bishop shall have the Advantage to present by Lapse, where the **G** **1 H. 7. 9.** Church doth become void by Resignation or Deprivation, without giving **H** **12 & 13 Ed.**

(a) It is otherwise if a Stranger does it alone. *22 H. 6. 25, 26. Vide post. 42.*

(b) So that it seems the Presentment without

Institution, &c. is a Disappropriation. *11 H. 6. 32, 33. 22 H. 6. 28.*

See *Plowd. 500, 501. Bro. Quare impedit 38, 111. 38 H. 6. 39.*

- (a) Notice thereof to the Patron. See 5 Ed. 4. 9. 1 H. 7. 9. Bro. Notice, &c. Dyer 293. e. 237.
- I Where the Bishop doth refuse the Clerk of the Patron for Non-ability, or for Crime, he ought for to give (a) Notice thereof to the Patron, otherwise he shall not present for Lapfe; but after the six Months past, the Patron shall have a Writ to the Bishop, if the Church do remain void, and the Bishop hath not collated thereunto. Doctor and Student 177. 12 Eliz. Dyer 293.
- K The Chancellor of *England* shall present unto all the King's Churches which are under the Sum of twenty Marks by the Year, which are in the King's Gift, and in the Right of the Crown: But if the King hath them by any other Title, then the Chancellor shall not present unto them. See 13 Ed. 4. 3. 11 H. 4. 80. 38 Ed. 3. 3-
- L The Death of one Plaintiff, nor the Nonsuit of one Plaintiff, shall not abate the Writ, but he shall be severed. Co. 10 Part, 134. 38 Ed. 3. 36. Co. Lit 246. a.
- M Where an Infant hath an Advowson by Descent, and the Church voideth, and he who hath Title paramount doth usurp, and present unto the same Church, and the six Months do pass; he is remitted by this Usurpation, and the Infant out of Possession, and without Remedy by that Usurpation.
- N If a Man hath an Advowson, and the Church doth become void, and two Strangers do severally present their Clerks to the Bishop to that Advowson; the Patron shall have divers *Quare impedit*s against them, if he will, and shall have several Judgments, and shall recover several Damages for their several Presentments and Wrongs done.
- O If a Man maketh another his Proctor, to present unto all his Advowsons, and to do several Things for him; if the Proctor present, as Proctor unto 17 Ed. 3. 60 Fitz. Quare impedit 68.

(a) Nor shall Lapfe devolve to the King without Notice. See also touching Notice, 7 *Eliz.* Dyer 2. 5 Ed. 4. 9. 1 H. 7. 9. Bro. Notice 6 & 29. and 14 H. 7. 21. A Diversity where the Patron is a Layman, or not. Also 15 H. 7. A Diversity where it is of a Matter whereof the Patron may take Notice, or not.

(Sir M. H.) Note; No Lapfe shall be without Notice, although that the Church be declared to be void, for that the Incumbent was *merè Laicus*. Dyer 293. *Pickering's Case*, in the Case of a Layman. In the Case of Death the six Months shall be computed from the Time of the Death, and where the Patron presents, and the Bishop refuses for Non-ability, the Bishop ought to give Notice of the six Months: Yet if the Patron does not present within six Months from the Time of the Death, (and in that Case, not from the Time of Notice of the Refusal) the Lapfe shall incur. Dyer 327. b. &c. for the Church of *Haughton*. And see there, that Notice ought to be given at the Church-Door, if the Patron cannot be personally found. Dyer

346. *Baron's Case*. And for the Form of a publick Intimation of Deprivation for not reading the Articles, see Dyer 369.

(Sir W. W.) The Statute 24 H. 8. of Residence, *cap. 2*. If one has a Benefice with Cure of eight Pounds Value, and takes another, the first shall be void as if he were dead. Here the Bishop need not give Notice to the Patron, because it is void by the Statute, by Dyer and *Weston*; which *Brown* denied, and said, That the Notice remained at Common Law, and by the Common Law the Bishop should give Notice of a Cession where one had a Plurality, &c. 7 *Eliz.* 116.

26 H. 8. If any spiritual Person be certified by the Bishop into the Exchequer for Nonpayment of Tithes, that *ipso facto* the Church shall be void. Here the Bishop shall not give Notice to the Patron of this Avoidance, because a newer Avoidance is given by the Statute, than was at the Common Law before, by Dyer and *Weston*, 7 *Eliz.* which *Brown* expressly agreed, (denied) *ut supra*.

him, unto an Advowson unto which he hath Right to present in his own Right, that Presentment shall put him out of Possession of the Advowson, and shall give the Possession to the other.

In a *Quare impedit* for the King, although the Defendant hath a Writ unto the Bishop against the King, the King may have a new *Quare impedit* against him of the said Avoidance, and make other Title.

See 11 Ed. 3.
Quare imp.
117.

If Prior and Convent ought to chuse the Abbot, and name him to the Patron, and he to present him to the Bishop, and they chuse one for Abbot, and name him to the Patron, (a) and the Patron doth present another to the Bishop; they may sue in the spiritual Court for Remedy, as it is said, *H. 11 Ed. 3. Tamen quere*; for it seemeth they are enabled to sue at the Common Law, as well as they are enabled to chuse and name the Abbot. As the Prior of *Westminster* and the Convent hath Power to sue their Abbot for an Advowson. *M. 20 Ed. 3.*

40 Ed. 3. 28.
per Foitescue.

If the Disturber present two or three Times within the six Months, yet a *Quare impedit* lieth against the Disturber upon the first Presentment, if he purchase the Writ within the six Months.

[36.]
16 H. 7. 8.
per Keble.
39 H. 6. 25.

Where a Man doth recover in a Writ of Right of Advowson, he shall present at the next Avoidance, and shall have a *Quare impedit*, without alledging any Presentment in himself or his Ancestors, but shall declare upon the Record, (b) or may have a *Scire facias* upon the Recovery. And so may his Heir have a *Scire facias* upon that Recovery against the Heir of the other Party, at the next Avoidance after the Recovery; but not after, as it seemeth.

15 Ed. 2. fol.
174.

If a Man recover in a *Quare impedit*, he shall have a *Scire facias* against the Patron and the Incumbent who made Default, if he will sue Execution of this Recovery (c).

If Coparceners make Partition in the Chancery, or in the Common Pleas, to present by Turns, and afterwards a Stranger doth usurp in their several Turns; yet after, when their Turns come, every of them may have a *Scire facias* upon this Partition against the (d) Stranger when his Turn cometh, to shew wherefore he should not present, notwithstanding the Usurpation aforesaid. But otherwise it seemeth it is, if the Partition be of Record, then they shall be put to their Writ of Right by reason of this Usurpation.

16 H. 7. 3.
*c.

(a) Note; In such Case the Profits are to the Prior, and yet the Freehold is in the Abbot. *20 Ed. 3. Non-ability* 9. *14 H. 4. 10.* adjudged.

(b) See *13 Ed. 3. Scire facias* 118. Where the Conusee of a Fine of an Advowson brought a *Scire facias* at the next Avoidance against the Heir of the Conusor, and held good without shewing any Presentment.

(c) He shall have a *Scire facias* against the Heir at the next Avoidance. *39 Ed. 3. 25.* But

the Heir shall not have a *Scire facias* on a Recovery in a *Quare impedit*. *9 H. 6. 57. a.* because in the *Quare impedit* the Presentment only is recoverable, and not the Advowson.

(d) Yet see the contrary *33 Ed. 3. Quare impedit* 196. which seems not to be Law; for there it was brought against an Estranger, and held, That though by such Usurpation he put the one Coparcener (whose Turn it was) out of Possession; yet it did not put the other out of Possession. See *43 Ed. 3. 15. 22 Ed. 4. 9.*

- D** If Coparceners make Composition to present by Turns, (a) and a Stranger doth usurp, and presenteth in the Turn of one of them, yet if they will they may join in a *Quare impedit* against the Stranger, notwithstanding the Composition. And after Composition to present by Turns, if they do present in common, they may well so do. But it seemeth by that, that the Composition is waved; for if Coparceners (where one is within Age) make Composition to present by Turns, and at full Age they present contrary to this Partition, these Presentments shall avoid the Partition made before.
- E** If the eldest Son by the first Venter present, and dieth without Heir, and afterwards the Church becomes void, the younger by the second Venter shall not present, nor have this Advowson. But *Devon* saith, If a Man hath two Daughters by divers Venters, and they enter, and make Partition to present by Turns, and one dieth without Heir, the other Sister shall be her Heir: *Which was granted*. But after the Partition, if one Sister hath presented, and afterwards dieth without Heir, it seemeth her Sister of the Half-Blood shall not be Heir unto her. 3 H. 7. 51.
10 Ed. 3. 53.
10 Ass. 17.
- F** (b) If a Man be disseised of a Manor unto which an Advowson is appendant, and the Disseisor suffer an Usurpation by a Stranger unto the Advowson, and afterwards the Disseisee doth re-enter into the Manor; he shall present unto the Advowson when it doth become void, notwithstanding such Usurpation.

Spoliation.

- G** **T**HERE is a Manner of Suit called *Spoliation*, for the Fruits of a Church, or for the Church itself, which is to be sued in the spiritual Court, and not in the temporal Court; and therefore there is no Writ thereof in the Register. But it is good to be known what Person shall have that Suit, and against what Person it will lie, and for what Thing he shall sue, and when he shall sue, and in what Court.
- H** *Spoliation* properly lieth for an Incumbent against another Incumbent, where the Right of the Patronage doth not come in Debate: As if a Parson be created Bishop, and hath a Dispensation to hold (c) his Rectory, and afterwards the Patron doth present another Incumbent, who is instituted and inducted; now the Bishop shall have a *Spoliation* against that Incumbent in the spiritual Court, because he claimeth by one Patron, and the Right of the Patronage doth not come in Debate. 38 H. 6. 20.
Fortescue.
26 H. 8. 3.
- And so if a Parson do accept of another Benefice, for which the Patron presents another Clerk, who is instituted and inducted; now one of them may sue a *Spoliation* against the other, and then it shall come in Debate, whether 38 H. 6. 20.

(a) Note; They may wave the Partition of the Advowson and the Allotment thereon, and present by a new Partition. 21 Ed. 3. 31. 13 Ed. 3. *Quare impedit* 58. 33 Ed. 3. *Quare impedit* 196, by *Skipro*.

(b) See 24 H. 6. 16. 33 H. 3. 33. 3 H. 4. 7, 8. See also 8 H. 6. 17. a. 14 H. 6. 15. And so it is if a Disseisor has presented.

(c) *Sed*. By Force of his former Title, and not in *Commendam*.

26 H. 8. 3. he hath Plurality or not. But if a Patron do present a Clerk unto an Advowson, who is instituted and inducted, and afterwards another Man doth present another Clerk to the same Advowson, who is also instituted and inducted; there one of them shall not have a *Spoliation* against the other, if he disturb him of the Church, or to take the Fruits thereof, because the Right of the Patronage doth come in Debate in the spiritual Court, which of the Patrons hath a Right for to present: And therefore in that Case, if one of them sue a *Spoliation* against the other, he shall have a Prohibition unto the spiritual Court, and no Consultation shall be granted for the Cause before said.

And if one Clerk, without any Presentation, Institution or Induction, do cast another Person out of his Rectory, and taketh the Profits thereof, the Parson shall not have a *Spoliation* against him, but an Action of Trespass; or an Assise of *Novel Disseisin*; for *Spoliation* doth not lie, if not against him who cometh to the Possession of a Benefice, or unto the Fruits thereof, by the Course of the spiritual Law, *scil.* by Institution, &c. so that he have Colour to have it, and to be Parson by the spiritual Law.

38 H. 6. 19.
Markham.
26 H. 8. 3.
22 H. 6. 27.

So if a Prebend happen void, and the Bishop collate thereunto, and before Induction the Bishop die, and the Temporalties come unto the King, and afterwards he is inducted, and afterwards the King giveth the same by his Letters Patent unto another Clerk, who is instituted and inducted; the first Clerk shall have a *Spoliation* in the spiritual Court against the Presentee of the King, because the King ought to have removed him by *Quare impedit*, and not to have collated as he did. And there the Patronage doth come in Debate.

[37.] If an Abbot have a Manor into which an Advowson is appendant in Fee, and he doth appropriate the Advowson to him and his Successors, and afterwards leaseth the Manor for one thousand Years, and also the Advowson, and the Lessee makes an Union of the Parsonage and the Vicarage, and presents the Vicar unto the Ordinary as Parson, &c. by reason whereof the Abbot sueth a *Spoliation* against the Vicar, and the Vicar sueth a Prohibition; the Abbot shall not have a Consultation upon the Matter shewed. By which it appeareth, that a *Spoliation* doth not lie for the Abbot in this Case; for that the Right of the Patronage doth not come in Debate.

M. 44 Ed. 3.
33. Quare
impedit 4.

And so if an Abbot be Parson imparsoned, and a Stranger present his Clerk to that Advowson, who is instituted and inducted; the Abbot shall not have a *Spoliation* against the Clerk, but an Action of Trespass or Assise, if he be ousted; because the Right of the Parsonage is to be tried.

38 H. 6. 19,
20, 28.

And if a Clerk obtain a Benefice by Provision, for which Cause the King is to have the Presentment for that Time, because the very Patron did not present within the Time limited him by the Statute of 25 Ed. 3. and the King presents to the Church his Clerk to the Ordinary; who is instituted, and before Induction takes the Profits; he who is in by Provision shall not have a *Spoliation* against him, because he doth not come to the Possession of the Church by the spiritual Law, but as an Intruder and Trespasser. But if the Presentee of the King were inducted, then there is no Remedy for him who hath the Benefice by Provision.

A Clerk

D A Clerk had a Collation by the King unto a Chapel, and was put into Possession by the Sheriff, and afterwards the Clerk was ousted by a Prior, &c. in that Case he shall not have a *Spoliation*, but an Assise or Trespafs, &c.

E But it appeareth by the Register, that one Parson shall have a *Spoliation* against another Parson, which have divers Patrons, &c. if he be spoiled of any Tithes or Profits appertaining to his Church, which do not amount to the fourth Part of the Value of the Church, as before is said. But if they do amount unto the fourth Part of the Church, then one Parson shall not have a *Spoliation* against another Parson, if they claim not of one Patronage, so that the Title of the Patronage doth not come in Debate; and then he shall have a *Spoliation*; and if the other sue a Prohibition, &c. he shall have a Consultation.

Ne admittas.

F THIS Writ of *Ne admittas* lieth for the Plaintiff in a *Quare impedit*: And the same is where one hath an Action (a) depending in the Common Pleas of *Darrein Presentment*, or of *Quare impedit*, and he supposeth that the Bishop will admit the Clerk of the Defendant pendent the Plea betwixt them; and he may sue this Writ directed to the Bishop. And this Writ ought to be sued within the six Months after the Avoidance; for after the six Months he shall not have this Writ, because that then the Bishop may present for Lapse; and therefore it is in vain then for to sue this Writ, because that the Title to present is then devolved unto the Bishop: But the King may sue this Writ after the six Months, where he hath a *Quare impedit* depending, or Assise de *Darrein Presentment*, because that *no Time runs against the King*.

33 Ed. 3.
Quare impedit 194.
Note; In Marrow's Reading it is holden, that the six Months shall not be accounted by 28 Days, but according to the Calendar Months.

But there is a Rule in the Register, thus; *It is to be noted, when the King presents in Right of his Crown, then Time runs against him*. But that is not Law at this Day.

And the Writ of *Ne admittas* for the King is such:

G *The King to the worshipful Father in Christ W. by the same Grace Bishop of Winchester, greeting: We prohibit you, that you admit not a Parson to the Church of I. which is void, as it is said, and touching the Advowson whereof a Suit is moved in our Court between us and A. or thus; between A. and B. until it shall have been discussed in the same Court, whether the Advowson of the same*

(a) In *Darrein Presentment* the Plaintiff recovered, and the Defendant brought a Writ of Error, and prayed a *Ne admittas* to the Bishop: But it was not granted. 17 Ed. 3. 5.

Note; In a *Quare impedit* the Case was, A. presented to the Archdeacon of Richmond, who is the Ordinary there, and B. procured a *Ne admittas* to the Archdeacon, and especially to the Bishop, who is his Superior; after which the Bishop prayed A. to appeal to him, who does so accordingly; and he inquires by a *Jure Patro-*

natus, and finds A. to be Patron, and thereupon admits his Clerk. And it seemed, 1. That the *Ne admittas* had made the Archdeacon a Disturber, if he had admitted, notwithstanding the *Jure Patronatus* found for A. 2 That the *Ne admittas* to the Bishop before the Appeal is nothing to the Purpose. 3. That the Request to the Party by the Bishop to appeal to him made him a Disturber, (*quare hoc*) notwithstanding the Finding in the *Jure Patronatus*.

Church belongs to us or to the aforesaid A. Or thus; In the same Court to which of them the Advowson of the same Church belongs: Or thus; Between us by reason of the Abbacy of S. being vacant and in our Hands, and H. Bishop of Lincoln, until it shall have been discussed in our same Court, whether the Advowson of the same Church belongs to us by reason of the Vacancy aforesaid, or to the aforesaid Bishop.

21 H. 6. 45. And it seemeth that the Defendant may sue this Writ as well as the Plain-
tiff, if the Defendant do suppose that the Bishop will admit the Clerk of the
2 Ed. 4. 11. Plaintiff pendent the Writ. And this Writ of *Ne admittas* doth not lie, if the
Plea be not depending in the King's Court by *Quare impedit*, or Assise of
Darrein Presentment. And therefore there is a Writ in the Register directed
unto the Chief Justice of the Common Pleas, to certify the King in the Chan-
cery, if there be any Pleas depending before him and his Companions by
Writ betwixt such and such Persons, &c. And therefore it seemeth the Writ
of *Ne admittas* shall not be granted before the King be certified in the Chan-
cery, that such Pleas of *Quare impedit* or *Darrein Presentment* be there de-
pending in the Common Pleas. But yet the Writ of *Ne admittas* may be
granted out of the Chancery directed unto the Bishop, that he do not admit,
&c. before the King be certified in the Chancery, that such Plea of *Quare im-
pedit* or *Darrein Presentment* is depending in the Common Pleas, then the Party
grieved may require the Chief Justice to certify the King in his Chancery,
that no such Plea is depending there, and thereupon the Party grieved shall
have such Writ:

[38.] *The King to the worshipful Father in Christ, &c. Although by our Writ we
have prohibited you, that you should not admit a Parson to the Church of I. (as
in the Writ of Ne admittas) nevertbeles, because it appears to us by the Certifi-
cate of our beloved, &c. I. of S. that no Plea is depending in our Court before
him and his Companions our Justices of the Bench, between us and the before-
mentioned W. touching the Advowson aforesaid; We command you, that you freely
execute that which you shall know to appertain to your Office in this Matter, our
Prohibition aforesaid notwithstanding. Witness, &c.*

And when the Bishop himself is Party and Disturber, then the Form of the A
Writ of *Ne admittas* is as aforesaid: *We prohibit you that you admit not.* Yet
the Form of the Writ used to be, *We prohibit you, that you collate not a Clerk
to the Church, &c. which is void, &c.*

Breve Episcopo ad admittendum Clericum *.

B IF a Man do recover his Presentation in the Common Pleas against the Bishop, then he may have a Writ to the same Bishop to admit his Clerk, or unto the Metropolitan; and the Writ shall be such:

The King to the worshipful Father in Christ, &c. Whereas the Prior of I. &c. in our Court hath recovered against us his Presentation to the Vicarage of W. We command you, that you admit a fit Person to the Vicarage aforesaid upon the Presentation of him the said Prior, &c.

C And if a Man recover against another than the Bishop, then the Writ which shall be made to the Bishop, shall be thus:

The King, &c. Whereas the Prior of, &c. in our Court, &c. hath recovered against I. P. &c. We command you, that notwithstanding the Re-claim of the aforesaid I. P. you admit a fit Person upon the Presentation of the aforesaid Prior, &c. And upon that he shall have an Alias and a Pluries, if the Bishop do not execute the Writ, and an Attachment against the Bishop, if need be.

have a Writ to the Bishop: *Contra* in Disclaimer in a Writ of Right of Advowson. 6 Ed. 3. 7. Reason is, because he cannot remove his Clerk after the six Months past.

D But if the King do recover in the Common Pleas any Prebendary, or Subdeanery, or Dignity against the Bishop, and giveth the same by his Letters Patent unto another Clerk; the Clerk shall shew the Letters Patent in the Common Pleas, and thereupon shall have a Writ unto the Bishop to admit him, and to induct him. And if the Clerk die before he be admitted and inducted, and the King giveth the same by other Letters Patent unto another Clerk; that Clerk shall have a Writ out of the Chancery directed unto the Justices of the Common Pleas, reciting the Recovery, and how that the other Clerk died before he was admitted, and how that he hath granted the same to this Clerk by his Letters Patent, commanding the Justices that they send another Writ to the Bishop, that he admit this Clerk, notwithstanding the King's Collation before made unto the other Clerk.

* (*W. W.*) If one pleads in Abatement of the Writ, and does not make Title, he shall not have a Writ to the Bishop, &c. held by the Justices, 43 Ed. 3. 25.

(*M. H.*) Note; This Writ is expressly judicial, and therefore shall issue out of the Place where the Record is; if Judgment be given at the *Nisi prius*, the Justices of *Nisi prius* shall award the Writ to the Bishop: (Yet it seems this

Writ is not returnable.) And when it appears, that the Record is sent into *B. C.* it shall issue from thence. *Dyer* 194.

Note; In a *Quare impedit* against the Archbishop of *York*, if he be found a Disturber, the Writ shall issue to the Archbishop of *Canterbury* to admit the Clerk; *per Cur.* *Dyer* 327, 328. See *Dyer* 76, 77. 19 Ed. 3. *Quare impedit* 153

11 H. 4. 71. (a) In a *Quare impedit* betwixt two Strangers, if there doth appear to the E
Hank. and Court a Title for the King, they shall award a Writ unto the Bishop for the
Hill. King.
21 Ed. 4. 3.

(b) If a Man do recover an Advowson, and the six Months pass, yet if the F
Church be void, the Patron may pray a Writ unto the Bishop, and shall have
it; and if the Church be void when the Writ cometh to the Bishop, (c) the
Bishop is bound to admit his Clerk. And in Reason the same Law is, if the
Patron after the six Months present unto the Bishop, if the Church be then
void, the Bishop is bound to admit his Clerk.

14 H. 4. 11. (d) And a *Quare impedit* shall be sued against a Sub-Prior, &c. for Distur- G
Hankford. bance of the Patron. *Trin.* 31 Ed. 1.
31 H. 6. 15. *contra* where
there is Fault
in the Count.

7 H. 6. 15. (e) Where the Writ abateth for Form or false *Latin*, the Defendant shall H
per Curiam, not have a Writ to the Bishop. If the Patron who is Defendant make De-
contra, if the fault at the Distress, and the Incumbent abate the Writ by Plea, a Writ unto
Patron had the Bishop shall not be awarded for the Patron, because he made Default.
appeared, and
the Incumbent
made Default, in 7 H. 6. 37. 14 H. 4. 16. upon Pleas of the Incumbent, a Writ awarded to the Bishop.

10 H. 6. 4. f. (f) In a *Quare impedit* against the Bishop and others, all made Default but I
the Bishop, and the Plaintiff had not a Writ unto the Bishop against the others,
until he had counted against the Bishop.

33 H. 6. i. (g) If the Plaintiff be Nonsuit, the Defendant shall not have a Writ unto K
22 H. 6. 44. the Bishop before he hath made Title to the Advowson.
1 H. 7. 13.

31 H. 6. 14. 38 H. 6. 14. 34 H. 6. 44. 11 H. 6. 8. Note; And there the Writ was brought by two Coparce-
ners against the third, and others.

Wint. 9 H. 6. (b) Where the Defendant claimeth the Advowson as Parson imparsoned, L
16. per Cur^r; although it be found for the Defendant, he shall not have a Writ to the
the Plaintiff Bishop.
shall have a
Writ to the
Bishop upon insufficient Plea. 21 H. 6. 36. Aid. 33 H. 6. 1.

(a) See accordant 21 Ed. 4. 3. b. per Cloke.
11 H. 4. 71. per Hankf. and so it shall issue, if
it be found against the King in a *Quare impedit*;
and yet if the Right appears for the King on a
special Verdict, he shall not have a Writ to the
Bishop. *Rex versus Episc' Roffen'*. See 4 Eliz.
243. 16 H. 7. 12. F. *Brief al Evêque* 13.
Bro. 86. 44 Ed. 3. 10. *Stamf.* 95. a.

Note; On this Writ there lies an *Alias*, *Plu-
ries* and *Attachment*, and thereon the Parties shall
plead, as in a *Non admittit*. Q. 121.

(b) *Ante* B. and 35. 11 H. 4. 80.

(c) *Doctor and Student* 125. 13 Ed. 4. 3.

(d) 14 H. 4. 11.

(e) *Vide* M. *infra*, and 13 H. 4. 7.

(f) *Vide* 10 H. 6. 4. 11 H. 6. 8. 22 H. 6.
44. 26 H. 6.

(g) See 2 H. 6. 5. 26 H. 6. & *infra* N.

(b) See a Writ to the Bishop by the Defen-
dant, where the Plaintiff had discontinued his
Suit, as if he be effoined, where he had an At-
torney, &c. 14 H. 4. 12. The Writ went to
the Bishop on a Title made where the Writ
abated. 9 H. 5. 11. If the Defendant says he
has (no) Title to the Church within the same
Bishoprick, he may have a Writ to the Bishop.
Quere 8 H. 6. 37. 9 H. 6. 17. A Writ went
to the Bishop on a Title made for the Defen-
dant, where the Writ abated. 11 H. 6. 53.
31 H. 6. 25.

- M (a) Where the Writ abateth for *Misnomer*, or for Insufficiency, the Defendant shall not have a Writ to the Bishop.
- N (b) If the Defendant do not appear at the Distress returned against him, the Plaintiff shall have a Writ to the Bishop without (c) making Title. *Vide supra* K.
- O If the Sheriff return upon a *Quare impedit*, That the Plaintiff hath not found Pledges, then the Plaintiff may find Pledges in the Common Pleas, and shall have a new *Quare impedit* in the Common Pleas; and if the Sheriff return upon that Writ *tarde*, and the Defendant appear, and the Plaintiff be called and appeareth not, the Defendant shall not have a Writ to the Bishop, because that no Writ is served against the Defendant. ^{2 H. 5. 3.}
- P Where the Plaintiff recovereth by Verdict in a *Quare impedit*, and it is found by the same Verdict that the six Months are past, and that the Metropolitan hath presented, whereas the Ordinary ought to have presented, &c. and that the Year is now past, &c. yet the Plaintiff shall have a Writ to the Bishop. See 38 *Ed.* 3. 12. ^{11 H. 4. 20.}
- Q If a Man recover against a Bishop, he may have a Writ to the same (d) Bishop, or unto his Vicar General, if he be out of the Realm, or unto the Metropolitan. ^{7 H. 4. 37.}
- R A Man sued divers *Quare impedit*s against the Bishop, and he was Nonfuit in all but one Writ; the Defendant had not a Writ to the Bishop until that Writ was determined. ^{12 R. 2.}
- S (e) In a *Quare impedit* the Defendant pleaded to Issue, and after made Default, and a Writ was awarded unto the Bishop for the Plaintiff. ^{2 H. 4. 1.}
- T (e) At the *Distringas* returned against the Defendant, he comes, and hath Day by the Prayer of the Parties, and afterwards makes Default; the Plaintiff shall not have a Writ to the Bishop, but a new *Distringas*. *Vide supra* N. [39.]

(a) *Vide supra* H. 21 H. 5. 56. 11 H. 6. 3. Where it shall abate for false *Latin*, see 14 H. 4. 11. 3 H. 6. 3. 13 H. 6. 15.

(b) *Vide supra* H. 21 H. 6. 56. 11 H. 6. 3. 27 H. 6. 12.

But if he appears at the Grand Distress, and after makes Default, a *Distringas* shall issue, and then a Writ to the Bishop. 13 *Ed.* 3. *Brief al Evesque* 19. and although *Nihil* be returned on every Part of the Process, *viz.* on the Summons, Attachment and Distress, yet the Plaintiff shall have a Writ to the Bishop. 12 H. 4. 4. 21 H. 6. 56. 11 H. 6. 3.

(c) And so have a Writ of Inquiry of Damages. 24 *Ed.* 3. 37. yet see 12 H. 4. where no Writ shall issue.

(d) See 16 *Ed.* 3. *Quare non admisit* 3. But if he has once a Writ to the Metropolitan, he

shall not afterwards resort to have a Writ to the Bishop, or to the Bishop's Vicar, if he be out of the Realm. 38 *Ed.* 3. 12. But in that Case he has a *Sicut alias* to the Metropolitan, and yet *Note*; the Bishop was never found a Disturber.

See 38 *Ed.* 3. 22. The Metropolitan returned, that it was out of his Jurisdiction, and now the Plaintiff prayed a Writ to the Vicar of the Bishop, for that he was out of the Realm, and could not have it, because it did not so appear by the Certificate.

(e) *Note*; The Defendant came at the Grand Distress, and pleaded to the Inquest. *Contra*, where he comes not at the *Pone per vadios*, &c. 16 *Ed.* 3. *Brief al Evesque* 18. See 8 *Ed.* 2. *Quare impedit* 168. 16 *Ed.* 3. *pl.* 17. 13 *Ed.* 3. *pl.* 19. *Brief al Evesque* 19. See 2 H. 4. 1. accordant to the Diversity.

(a) In a *Quare impedit* the Defendant maketh Title for himself and others, A and afterwards the Plaintiff is Nonfuit; a Writ to the Bishop shall be awarded for the Defendant only, and not for the others.

14 H. 7. 19. and 7 H. 6. 15. (b) At the Distress returned against two, one appeareth, and the other B maketh Default; the Plaintiff shall have a Writ to the Bishop (c) against him who made Default; and yet it may be, that the other Defendant may bar the Plaintiff; and it is so used at this Day: But the contrary was adjudged, H. 7 Ed. 3. for the Cause before said.

13 Ed. 3. pl. 20. In a *Darrein Presentment* betwixt two Strangers, the Assise found a Title for C another Stranger; who was not Party to the Writ; he shall have a Writ (d) awarded to the Bishop for him, although he were not Party to the Writ, because that the Writ is, *What Patron presented last, &c.*

10 Ed. 3. 19. Where a Man hath a *Quare impedit* against one, and the Defendant hath a D *Darrein Presentment* against the Plaintiff, and recovereth in the *Darrein Presentment*, and the Plaintiff is Nonfuit in the *Quare impedit*, the Defendant shall have two Judgments against the Plaintiff, to have a Writ unto the Bishop in both Actions; and two Writs shall be awarded to inquire of the Damages; but he shall not render double Damages for one Disturbance.

When a Man sueth a *Quare impedit* against another, and after pendent the E Suit he sueth *Ne admittas* to the Bishop, &c. and afterwards they agree to present in common by Turns to that Advowson; then he shall have a special Writ out of the Chancery unto the Bishop, to admit him who ought, by the Accord and Composition, to present at the first Turn to that Avoidance. But first the King ought to send a *Certiorari* unto the Justices of the Common Pleas, to certify in the Chancery of the Accord there; and upon that Certificate the King shall send his Writ unto the Bishop to admit his Clerk, who by the Accord ought to have the first Presentment and Turn. And the Form of the Writ in the Register is such:

The King to the Worshipful, &c. Whereas by our Writ we lately prohibited you, F that you should not admit a Parson, &c. of the same third Part of the Advowson, and afterwards at the Prosecution of them the said E. and M. suggesting to us, that it was agreed between them in this Manner, that the aforesaid E. should present his Clerk to the said third Part for this Turn, and the aforesaid M. upon

(a) See 13 Ed. 3. *Brief al Evesque* 25. accordant. See also for this 11 H. 6. 8. A. B. and C. Parceners brought a *Quare impedit* against C. who severed, and afterwards A. and B. were nonsuited; C. shall not have a Writ to the Bishop without Title shewn, and yet on the Title shewn, the Title would appear for the Plaintiff. See 13 Ed. 3. pl. 20 and 25.

(b) See 13 Ed. 3. pl. 21, and ante.

(c) See accordant 13 Ed. 3. *Brief al Evesque* 21. *Lib. Entry. Quare impedit in Judgment* 4. fol. 507. But a *Cesset executio quoad Breve, &c. quousque. Vide contra* 7 Ed. 3. 4. (Expressly) in a Writ against the Bishop and others: Where

the Bishop disclaims, the Plaintiff shall have a Writ to the Bishop; *sed cesset executio quousque placitum, &c.* See 17 Ed. 3. *Brev. al Evesque* 58. If the King brings a *Quare impedit* against B. and another *Quare impedit* against B. and C. and B. comes in, *Et non potest dedicere*, the first Writ to the Bishop shall proceed for the King notwithstanding; for it is an Original.

(d) See accordant *Bracton* 248. where the Assise is taken *per modum Assise*, and not *per modum Jurate*. See also accordant 13 Ed. 3. *Brev. al Evesque* 20. by Aldr. and 17 Ed. 3. 22. by Wilby.

the next Avoidance shall present his Clerk, as by certain Writings indented, made between them, and sealed with their Seals, and shewn before us in our Chancery, fully appears; and that they have sued unto you, earnestly praying that you, in whose Power it is, would admit the Clerk of him the said E. for this Turn, to the said third Part; nevertheless that you, asserting that your Hands are tied up by Pretence of our said Prohibition, have refused to admit the Clerk of him the said E. And they beseeching us that we would cause to be provided for them a fit and apposite Remedy in this Behalf, that the Collation of the aforesaid third Part for this Turn may not devolve to you by Lapse of Time, which nearly approaches, as it is said; We commanded our beloved and faithful R. of N. that he should thereupon certify to us in our Chancery, under his Seal, distinctly and openly, the Cognizances which the before-mentioned E. and M. willingly made before him, viz. whether they had agreed upon the Right of presenting to the third Part in Manner aforesaid, and if the said M. was willing that the Clerk presented by him the said E. to the same third Part should, for this Turn, be admitted and received to the same, and if the said Writings be the Deeds of them the said E. and M. And because the before-mentioned R. at our Command, hath certified that it is agreed between the before-mentioned E. and M. that the aforesaid E. for this present Avoidance, shall present his Clerk to the said third Part, and the aforesaid M. at the next Avoidance following, and so the aforesaid E. and M. and their Heirs, shall alternately for ever present to the aforesaid third Part; and that the said Agreement might be firmly observed, the aforesaid Writings were made between the Parties aforesaid: We command you, that you admit a fit Person to the third Part aforesaid upon the Presentation of the before-mentioned E. for this Turn, and that you further execute what belongs to your Office in this Behalf (notwithstanding our Prohibition aforesaid). *Witness, &c.*

G (a) By this Writ it seemeth a Man shall have a *Quare impedit quod permittat ipsum præsentare ad tertiam partem Ecclesiæ*; and it seemeth to stand with Reason; for a Consolidation may be made of three Advowsons, and every Patron to present by Turn, and then every one hath Right but to a third Part. 40 Ed. 3. 28.
50 Ed. 3. 26.
3^d H. 6. 24.

Prohibition and Inhibition.

H THERE are divers Manners of Prohibitions and Inhibitions, and they may be directed as well unto the Temporal Court as unto the Spiritual Court. And one Writ in the Register is, where a Man sueth a *Præcipe in Capite* against another in the Common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are so holden may sue this Writ directed to the Justices of the Common Pleas, commanding them, that if it do appear unto them that the

See post. Con-
sultation.

(a) See the Writ in case of a Consolidation, where each Party has presented by Turns; *Quod permittat eum præsentare ad Ecclesiam*, Dyer 259 and 78. Note; It is there held, that in this Case they are not Moieties, but each has the Intirety in his Turn. But it is otherwise of a Composition between Parceners. 5 Co. 102. *Windſor's Case*.

Lands

Lands are not holden of the King, &c. but immediately of another, that they do not (a) meddle with the Conufance of that Plea, but that they bid the Party fue his Writ of Right Patent, *If it fhall feem expedient to him.* And in a Writ of Right, if the Tenant vouch a Foreigner to Warranty, the Tenant [40.] fhall have a Writ of *Superfedas* directed to the Bailiffs of the fame Court, to furceafe the Plea, until the Warranty be determined; and if the Bailiffs will not furceafe for that Writ, then the Tenant fhall have another Writ of Inhibition directed unto the Sheriff, that he go unto the faid Court; and to inhibit the Bailiffs, that they do not proceed in the Plea until the Warranty be determined, &c. And if they will not furceafe for that Writ, then the Tenant fhall have Attachment againft the Bailiffs directed unto the Sheriff, returnable in the Common Pleas or King's Bench.

A Prohibition may be directed unto the Sheriff at the Suit of the Tenant, A that he do not hold Plea in a Writ of Right, unlefs Battel fhall be thereupon waged, becaufe that the Tenant hath put himfelf upon the Grand Affife.

And a Man may have a Writ of Prohibition directed unto the Sheriff, to B go unto the Lord's Court, and to inhibit the Bailiffs, that they do not hold Plea in the Lord's Court of a Houfe, &c. *between A. Demandant, and B. Tenant.* And he may have another Writ unto the Sheriff, to prohibit the Lord himfelf, that he do not hold the Plea, &c.

And alfo the Tenant may have another Prohibition directed to the Sheriff, C to prohibit the Bailiffs of the Bifhoprick of the Hundred of F. that they do not hold Plea in the faid Hundred *between A. Demandant, and B. Tenant, of Customs and Services which the fame A. requires of him for his free Tenement, which he holds of him in I. unlefs Battel fhall thereupon be waged;* becaufe the faid B. hath put himfelf upon the Grand Affife, &c. And if Tenant by Receipt fue fuch a Prohibition, the Writ ought to make Mention of the Receipt.

See Articuli Cleri 83.

Where the Bifhop holdeth Plea of an Advowfon, or of the fourth Part, or D of the third Part thereof, then the Party fhall have a Writ of Prohibition directed unto the Bifhop himfelf, in this Form:

The King to the worfhipful Father in Chrift A. by the fame Grace Bifhop of Winchefter, and his Officials and their Commiffaries, greeting: We prohibit you, that you do not hold Plea in the Court Chriftian of the Advowfon of the Church of N. or of the Moiety, or of the third Part, or of the fourth Part of the Church of N. whereof S. and T. complain, that R. draweth them into Plea before you, &c. And he may have a Prohibition to the (b) Party himfelf, Ne fequatur, by thefe Words; We prohibit you, that you purfue not the Plea in the Court Chriftian of the Advowfon, &c. whereof C. complains, that you draw him into

(a) Where a Prohibition fhall be in cafe of an incident Plea, if the Property of Goods comes in Debate on a Plea for a Legacy, Mortuary, &c. as if a Legacy be devised to the Heir of I. S. fo that it comes in Debate who is Heir of I. S. yet a Prohibition does not lie. *Contra*, if in a Suit for Tithes the Bounds of a Parifh comes in Debate. *Kilw.* 110.

(b) Note; If the Suit be prohibited by Law, and without Writ, or if by Writ, and not by Law, yet, though he fue before Attachment, a Prohibition lies. 33 *Ed.* 3. *Attachment* 14. 8 *R.* 2. *ibid.* 150. See the Writ *Contra pacem*, 31 *Ed.* 3. *Attachment, Sur Prohibition* 8.

that

that Court, &c. And he may have an Attachment thereupon against him, if he follow it after the Writ cometh unto him.

E And the King for himself may sue forth this Writ, although the Plea in the Spiritual Court be betwixt two common Persons, because the Suit is in Derogation of his Crown.

F And the King may sue an Attachment upon the same, if they do proceed, &c. And in the Time of Vacation of a Bishoprick, the Prohibition shall be directed unto the Guardian of the Spiritualities, and to his Official and Commis-

G saries. And a Prohibition lieth for Chantries, Chapels, Prebends and Vicarages, &c.

H (a) If a Man sueth another in the Spiritual Court for a Chattel or Debt, the Defendant shall have a Prohibition, and the Writ shall be, *We prohibit you, that you do not hold Plea in the Court Christian of Chattels or Debts, &c.* And he may have a Writ unto the Party himself, that he shall not sue there, &c. and shall have an Attachment thereupon, if they sue there afterwards, &c. And also the King may sue this Writ, and it may be directed unto the Judge and Party. And the King may have an Attachment upon it.

I (b) If a Man sueth another in the Spiritual Court for a Lay Fee, which is ^{15H.5.pl.22.} Land or Tenements, or the like, then he shall have a Prohibition, and the Writ shall be, *We prohibit you, &c. that you do not hold Plea, &c. of the King's Lay Fee in S. whereof he complains that H. draws him into Plea, &c.* And he may have another Writ unto the Party himself, &c. *That he do not pursue, &c.* and he may sue an Attachment upon it; and he may sue an Attachment only against the Party, or against the (c) Judge only, or against both, at the Election of the Party who will sue. And if the Judge do dwell ^{9H.6.54.} in one County, and the Party in another County, then if he will have an At- ^{15H.5.pl.22.} tachment against both, he must sue forth several Writs. And so it seemeth, if he sue several Prohibitions against them, he ought to sue several Attachments against them, if he will sue both, although they be dwelling in one County.

K And a Man shall have an Attachment upon a Prohibition against the Judge, if he refuse to receive the Prohibition, and to admit of it.

(a) In Debt on simple Contract against an Executor, a Prohibition lies, for there is no Remedy for this at Common Law against Executors. 13 H. 4. 5. per Thirning. 8 Ed. 4. 13. per Catesby.

(b) But if the Bishop himself sues, the Writ is good, *Ne sequatur.* 28 Ed. 3. 94. and see there divers join in an Attachment on a Prohibition, as where they are jointly signed, &c. 14 H. 6. 9.

(c) Where there shall be an Attachment against the Judge and Party by a several *Pone per vad.* see 33 Ed. 3. Brief 912. For the Act of the Judge is depending on the Suit and Act of the Party, and see there an Attachment on a Prohibition against the Plaintiff and the Judge,

where the Prohibition was only directed to the Judge, and held by *Newton* not good. For the Plaintiff in the Suit there shall not answer to the Contempt, but only to the Trespass; because no Prohibition was directed to him, and so he cannot be joined in the Action. But *Alcough contra*, that the Law is in itself a Prohibition, and so there needs no Mention of any Prohibition, and therefore the Plaintiff shall answer for the Contempt, as in a *Præmunire, &c.* which *Norton* agreed, had the Prohibition been directed to both of them, and yet this Surmise is not traversable. 19 H. 6. 54. a. b. See accordant of the Matter of the Prohibition, that it is not traversable. 9 H. 6. 61. a. 21 Ed. 3. 29. a. 38. b.

(a) And

V. 11 H. 4. 47.
by which it
feemeth a spi-
ritual Thing.
7 H. 4. 1.

(a) And a Prohibition lieth, if a Man be sued in the Spiritual Court for the L Collation unto a Grammar School.

If a Man sue for Trespafs in the Spiritual Court, the King or the Party M shall have a Prohibition and Attachment, as before is shewed, unto the Judge or Party, or unto them both.

(b) In some Cases a Man shall have a Prohibition when he is sued in the N Spiritual Court for the Tithes of his Lands. As if a Man be the King's Tenant, and holdeth of him in Chief by Knights Service, and is sued in the Spiritual Court for the Tithes of the Demefne Lands, he shall have a Prohibition, because that these Lands may come into the King's Hands by reason of Wardship, or by Escheat; and then perhaps the King shall be otherwise charged than he ought to be charged, and therefore the same ought to be tried before the King in his Chancery.

Note; Tithes
sued for in
Chancery.

And so if a Bishop grant unto a Presentee in the Church of *Lincoln* the Tithes of his Demefne Lands, to him and his Successors; now if the Presentor be impleaded in the Spiritual Court for these Tithes, the King may grant a Prohibition; and the Form is such:

[41.]

The King to such a Judge, greeting, &c. The worshipful Father the Bishop of Lincoln hath shewen unto us, that whereas I. Presentee in the Church of the blessed Mary of Lincoln, holds of his Gift all the Tithes of his Demefne Lands, or of his Demefne of N. to which the same Bishop and his Predecessors, Bishops of the aforesaid Place, have been accustomed to collate, the Prior of Saint Katherine without Lincoln claiming those Tithes to belong to the Church of B. thereupon draws him into Plea, &c. And because the aforesaid Plea touches our Crown and Dignity, especially when the Collation of the same Tithes may devolve to us by reason of Wardship or Escheat, because also we in our Demefnes, and likewise many Noblemen of our Realm in their Demefnes, collate to the like Kind of Tithes, we prohibit you, &c.

(c) Also a Man may sue a Prohibition directed unto the Sheriff, that the A Sheriff do not suffer the King's Lay Subjects to come to any Place at the Citation of the Bishop, to make any Cognizances or perform an Oath, except in Matrimonial and Testamentary Causes. And the Party may have thereupon an Attachment against the Bishop, if he cite or distrain any one to appear before him to take an Oath at the Will of the Bishop, against the Will of him who is so summoned or cited. And by that it appeareth, that those general Citations which

(a) A Prohibition was granted to the Spiritual Court of *Exon*, where a Man was libelled against for teaching School without Leave from the Bishop. *Trin. Nono Annæ in Banco Regiæ.*

(b) See *Rot. Parliament. 8 Ed. 2. M. 18.* in the Case of the Proprietor of *Twineham* Church adjudged *contra.* See *Pas. 37 Eliz. C. B.* in the Case of *Sir Edward Wingfield.*

(c) See *Rast. Prohibition, pl. 6.* in Appeal, a Prohibition formed on *Articulos Cleri*, and there it is *ad aliquam recogniti per Sacramentum facien-*

dum. Without doubt this cannot extend to the Depositions of Witnesses in another Cause of Ecclesiastical Jurisdiction, and by the Recognizances in Debt here mentioned in the following Sections, must be meant according to the Form of the Writ in the Register next ensuing, *fol. 36.* and in the five Writs there following; so it appears by the Writ at large in *Rastal*, that it is intended of an Acknowledgment of a Debt confirmed by an Oath by a voluntary Agreement and Consent of the Lay Gens.

Bishops make to cite Men to appear before them *pro salute Animæ*, without expressing any Cause, are against the Law, and the Party may have an Attachment against the Bishop for the same, and may sue a Prohibition so to do. And if he do express any Cause in the Citation, it seemeth by the Writ before, that it ought to be for some Matrimonial or Testamentary Cause. See 50. N.

- B If a Man doth acknowledge in the Spiritual Court, that he oweth another Man one hundred Pounds, to pay him at a Day certain, and after doth not pay the same, &c. if he be sued in the Spiritual Court for this Debt, he shall thereupon (a) have a Prohibition: And so if he acknowledge in the Spiritual Court, that he ought to pay to such a one a hundred Marks at such a Day, &c. he shall not be sued in the Spiritual Court for that Debt; and if he be, he shall have a Prohibition and Attachment thereupon. But if a Man, by reason of Marriage or of a Will, doth acknowledge in the Spiritual Court, that he ought to pay a hundred Marks, or any other Sum, at a certain Day; then if he do not pay it according to his Acknowledgment, he may be sued in the Spiritual Court for the same, and a Prohibition will not lie (b). 8 Ed. 4. 13. Post. 44. A.
- C And if a Man do acknowledge in the Spiritual Court to pay a certain Debt at a certain Day, and doth not pay it at the Day, for which the other sueth him in the Spiritual Court, and excommunicateth him there, because he did not pay it at the Day; the other Party shall have a Prohibition against him. Vide 22. A. 70. Thorpe.
- D If a Man do recover a Debt in the Spiritual Court against another, and after sueth there to have Execution; the Party grieved shall have a Prohibition against the Party and the Judge, and an Attachment upon the same.
- E If a Man be indebted unto the King, or bounden to render an Account unto him, and after his Executors are sued in the Spiritual Court for a Debt which doth not concern Matrimony or Testament; his Executors shall have a Prohibition against the Judge, &c. rehearing the special Matter, &c. 8 Ed. 4. 13. Post. 43. K.
- F Where an Abbot or Bishop, or other Person whatsoever, sueth in the Spiritual Court, because he taketh Toll, or other Composition or Custom of his Tenants, &c. there the Party grieved shall have a Prohibition against him; or the King may sue this Prohibition and Attachment thereupon.
- G Where a Man granteth Parcel of his Manor to another Parson in Fee, to be quit of Tithes by Deed, and the Parson with the Assent of the Ordinary grants unto him, that he shall be quit of Tithes of his Manor for this Parcel of Land, &c. if he or his Assignee be afterwards impleaded in the Spiritual

(a) See the foregoing Note, and 12 H. 7. 22. 20 Ed. 4. 10. 2 H. 4. 10. 11 H. 4. 88. 38 H. 6. 29. But by the Opinion of *Spelman* the Court shall punish him *ex officio*. See the Case 2 H. 4. 10. where a Vicar was sued before the Pope's Collectors, that he would not sue for an

Increase of his Portion, and thereupon (being sued for this before the Pope's Collectors) a Prohibition was awarded. Note; The Bond was to pay at the Pope's Chamber.

(b) So if he promises the Payment of Tithes. 20 Ed. 4. 10.

Vide Br. Pre-
scription 603.

Court for Tithes of his Manor, or any Parcel of his Manor, he or his Assignee shall have a Prohibition upon that Deed; and if the Deed were made before Time of (a) Memory, and so had continued to be quitted of Tithes of his Manor, he shall have a Prohibition, if he be impleaded for the Tithes of that Manor, or any Parcel thereof, upon the Matter shewed.

If a Man sue any Prohibition to any Spiritual Court, and the Judges will not receive the same, or will not allow it, and because he bringeth the Prohibition, they make a Citation against the Party, to answer before them for the same Cause; now he shall have a new Prohibition upon the Matter directed unto the Judges there, &c. And also he shall have an Attachment thereupon, if they proceed against him in their Court. And it is not material, whether the Prohibition were sued legally or erroneously, because he shall not be punished for suing a Prohibition in the King's Court.

A Man deviseth Lands in *London* in Mortmain, and by reason of this Devise the Abbot, or he to whom the Devise is made, sueth for these Lands, or for any Parcel thereof, in the Spiritual Court by Colour of the Devise: The Party grieved by this Suit shall have a Prohibition. I

If a Man sue another in the King's Court in Trespafs for Battery, or taking of his Goods, and afterwards is Nonsuit, and discontinueth the Suit, for which the Defendant sueth him in the Spiritual Court for Defamation, &c. he who hath sued in the Temporal Court shall have a Prohibition against him, and an Attachment thereupon, if he sue again in the Spiritual Court: And also shall have such Prohibition unto the Judge, and Attachment against him, if he hold Plea therein after the Prohibition delivered unto him. K

Where a Composition is made by Deed indented at the Time of the Avoidance of a Prior, that an Abbot shall nominate six Persons, and that the other shall elect one of them to be Prior unto the Ordinary; now if he who presenteth be sued in the Spiritual Court, because he hath presented one unto the Ordinary for to be Prior, he shall thereupon have a Prohibition against him who sueth there. And if the Sub-Prior and Convent sue in the Spiritual Court to avoid such Presentment, he shall have a Prohibition against the Judge, &c. L

[42.]

8 Aff. 28. And also the King may have a Prohibition directed unto the Ordinary, A
Br. Assise 138. that he shall not visit the Hospitals which are of the King's Foundation, or of
6 H. 7. 14. the Foundation of his Predecessors; because that the Chancellor of *England* ought for to visit them, and no other. And so is it of the King's or his Progenitors free Chapels, no Ordinary shall visit them, but the Chancellor of *England*, &c.

6 H. 7. 14. Where a common Person is the Founder of an Hospital, which is dona- B
Keble, vide tive by his Letters Patent, and doth consist all in Temporalties, if the Ordinary will visit such Hospital, the Founder shall have a Prohibition against
8 Aff. pl. 29. him: Or if the Ordinary will cite any of the poor Men to appear before him
Br. Ass. 138. for an Hospital Cause, or to remove him, the Founder, or his Heir, shall
8 Ed. 3. 69. pl. 37.

(a) Note; The Consideration is triable, although before Time of Memory. See 26 Ed. 2. *Prescript.* 52. 15 H. 3. *Prohibition* 22.

have

have a Prohibition. And such Hospital may be appendant unto a Manor, as well as the Advowson of a Church.

- C And if a Man recover his Presentation by *Quare impedit*, and hath his Clerk admitted and instituted, and another Person, who claimeth the Advowson by Provision from the Pope, sueth in the Spiritual Court, for to avoid and remove the other Clerk; the Patron who hath recovered his Presentment, &c. shall have a Prohibition unto the Judge for to surcease, &c. 11 Co. 99.
- D So if the King hath Title to present unto an Advowson, by reason of a Ward who is in the King's Hands, and after the six Months past presenteth his Clerk, who is admitted and instituted, and the Bishop present his Clerk before to the same Church for Lapse, who was admitted and instituted, &c. by reason whereof the Bishop's Clerk sueth the Clerk, who was presented by the King in the Spiritual Court; the King's Clerk shall have a Prohibition directed unto the Judges, &c. that they shall not proceed in the Plea, &c.
- E If a Man sueth a Priest or a Monk, or Canon or Clerk, in the Temporal Law, in Debt or Trespas, and cause him to be arrested by his Body; if they sue for his Arrest a Citation in the Spiritual Court *touching the laying of Hands upon a Clerk by Violence*, the other shall have a Prohibition directed unto the Judge. See the Stat. 9 Ed. 2. Articuli Cleri.
- F (a) If two Men are sworn to give Evidence unto a Jury, and do so, for which certain Persons are indicted; if they who are indicted sue them in the Spiritual Court who gave Evidence, for Defamation, they shall have a Prohibition.
- G Where a Man sueth in the Spiritual Court for Spiritual Causes, and the Defendant purchaseth a Prohibition directed unto the Judges there, and delivers the same, and for so doing the Judges do excommunicate him for the Offence he did to the Church, in bringing a Prohibition to them upon a Spiritual Cause; the Party excommunicate shall have a new Prohibition upon that Matter, commanding them for to revoke the same. For a Man shall not be punished for suing forth Writs in the King's Courts, whether he have Right or Wrong. Co.Lit.161.a.
- H If a Clerk of the Chancery, or any of his Servants, or the Keeper of the Great Seal, or any of his Servants, or the Chancellor, or any of his Servants, commits any Trespas in *London*, or elsewhere, and are sued for this Trespas in *London* before the Mayor or Sheriff for Trespas, they shall have a (b) *Superfedeas* directed unto the Mayor for to surcease, and bid the Party

(a) And so it seems if a Feme be sued for Defamation for prosecuting a *Homine Repleg'* for her Husband. 33 Ed. 3. *Brief* 912.

(b) But see such *Superfedeas* shall not be allowed after *Impar lance*; *per Cur'*, 9 Ed. 4. 53. 20 H. 6. 32. a. 22 H. 6. 7. Yet it shall be after Plea pleaded. 11 H. 4. 68. *per Hankford. Contra* 11 H. 6. 8. a. b. But there the Suit was in C. B. See 16 Ed. 4. 5, 6. 27 H. 6. 22. & *Dyer* 33, 34. 3 H. 6. 20. If a Clerk

in Chancery and his Wife, or other Person, be joined in a Suit by Writ of Trespas or Debt in C. B. &c. a *Superfedeas* is not allowable for the Clerk. But if a Clerk of B. R. and another be impleaded in C. B. in Trespas, a *Superfedeas* for one shall be allowed for the others: For the Plaintiff may have his Action against all of them in B. R. 14 H. 4. 27, 22. 34 H. 6. 29. b. 35 H. 6. 20. 20 H. 6. 32. a. 10 Ed. 4. 4, 5. *Dyer fol. ult. a.*

Vide 4 H. 3. sue in the Chancery, if it be needful for him. And there are divers Forms
 Prohib. 15. of these Writs in the Register; and one Writ reciteth, that this Custom and
 Vide 43. D. Privilege was confirmed by Authority of Parliament. Anno 18 Ed. 3.

11 H. 4. 88. If a Woman hath Title to sue a *Cui in vita*, and she swear unto the Tenant, I
 that she will not sue the *Cui in vita* against him; if she afterwards sueth forth
 the Writ, for which the Tenant sueth her in the Spiritual Court for Breach of
 her Oath, she shall have a Prohibition, because the Oath toucheth a temporal
 Thing, viz. Land.

If two several Patrons present severally to the Bishop, and thereupon one K
 sueth a *Quare impedit* or a *Darrein Presentment* against the other, and reco-
 vereth, and hath his Clerk admitted, for which the other Clerk sueth the
 Clerk who recovereth by Appeal or otherwise, in the Archbishop's Court, be-
 cause that he was not admitted at the Presentment of his Patron; the Patron
 who recovereth shall have a Prohibition directed unto the Archbishop, &c. or
 against the Clerk that sueth there for that Cause, that he do not sue for that
 Cause, &c.

And so it is if the Patron be disturbed by the Presentment of a Stranger, L
 and the Disturber's Clerk sueth the very Patron's Clerk in the Spiritual
 Court; or contrary, the Clerk of the rightful Patron sueth the Clerk of
 the Disturber in the Spiritual Court, he who is grieved shall have a Prohi-
 bition.

And if the King do collate unto any Prebendary, or recovereth the Col- M
 lation unto any Prebendary, and hath his Clerk admitted, and afterwards
 the Clerk who is vexed sueth in the Spiritual Court, by means of Appella-
 tion, or Commission, or other Cause, by which the Title of the Collation
 may come in Debate; the King shall have a Prohibition directed unto the
 Judges where the Suit is, commanding them, that they do not proceed.
 And if the King do recover his Collation or Presentation unto any Church, N
 [43.] and after Execution of the Judgment is disturbed by Appeals, or Citations,
 or other such Means; or if that after the Clerk be inducted, the King's
 Clerk be vexed by Appeals, or Commissions, or Citations in the Spiritual
 Court for this Cause; then the King shall have a Writ directed unto all
 Sheriffs, Mayors, and other Officers, to take and arrest the Bodies of those
 who made such Impediments, to disturb the Execution of the Judgment, or
 of such Presentations or Collations made by the King; and also shall have
 a Writ of Prohibition unto the Bishops and their Officers, that they do
 not any Thing in Derogation of his Presentment or Collation, or of the
 Execution of the Judgment given for the King. And also the King may
 sue such Prohibition directed unto the Party himself who sueth such Appeals,
 Provocations, Citations, Instruments or Process, &c. that they do not sue
 such, or permit such Appellations, Provocations or Impediments to be.
 And the King shall have an Attachment upon that directed unto the She-
 riff, &c. if the Party follow or suffer such, &c. to be sued contrary to that
 Prohibition.

A If the King do recover his Presentment unto a Church, and hath a Writ unto the Bishop, &c. to remove the other (a) Incumbent, for which the Incumbent sueth an Appeal in the Archbishop's Court, &c. by reason whereof the Archbishop sendeth a Prohibition, that he do not admit the King's Clerk pendent the Appeal, &c. then the King shall have a Writ directed unto the Archbishop and his Officers to take off his Inhibition, and that they do nothing, nor suffer any Thing to be done by others, in Derogation of the Crown or of the King's Right; and shall have another Writ against the Incumbent, that he follow not such Appeals, Provocations, or other Procefs or Impediments. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohibition directed unto him.

B And it appeareth by the Register, that another common Person who recovereth his Presentment, or hath Title to present, shall have such Writ of Prohibition unto the Spiritual Judges, or the Party, that they shall not proceed, or pursue such, &c. and also Attachment against them if they do, &c. And where the King's Clerk is in Possession by such Recovery, and is after disturbed by another with Force and Arms, that he cannot take the Tithes and Profits of the Church, he shall then have a special Commission directed unto the Sheriff, and other the King's Officers, to take such Persons, as well within Liberties as without, and to carry them unto the Gaol, there to remain till they have other Command from the King.

C And if the King do recover his Presentment, and hath a Writ unto the Bishop, and his Clerk is instituted and inducted; if the Bishop at the Suit of others hath Provocations, or other Instruments, to cite the King's Incumbent to the Court of Rome, or elsewhere out of the Kingdom; then the King shall have a Prohibition directed unto the Bishop, that he do not cite, nor cause to be cited, such Incumbent, &c. and the King may have an Attachment upon it, if, &c. And it seems that the King shall have a Prohibition without any Recovery had before, if his Presentee be instituted, &c. And so it seems a common Person shall have and sue such a (b) Prohibition, when the Suit is to try the Title of the Presentment or Collation; yet the Writs in the Register are and speak of a Recovery.

D If a Man make an Oath to infeof me before such a Day, &c. if he do not infeof me, I cannot sue him in the Spiritual Court for Breach of his Oath, because the Thing which is to (c) be done is a temporal Act, and shall be tried at the Common Law, whether he hath done it or not; and therefore if he be sued in the Spiritual Court for that Cause, he shall have a Prohibition. 11 H. 4. 83. contrary for personal Things. 4 H. 3. Prohibition 15. See 42. F. 2 Ed. 4. 20.

(a) And Note; If the Party be convicted in an Attachment on a Prohibition for the King, and he procures an Appeal, &c. yet he shall not have the Judgment which the Stat. 27 Ed. 3 c. 1. gives against those who make Default in a *Præmanire*; but only That he shall be taken. 30 Ed. 3. 11. b.

(b) See 22 Ed. 4. 20. 38 H. 6. 24. 11 H. 4. 88. 12 H. 7. 22.

(c) See 2 H. 4. 10. a. b. accordant; and so 11 H. 4. 88. For by *Hankford*, If it be found by a Jury, he shall be condemned and awarded to perform the Oath. Note 27 Aff. 70. In a Suit in Court Christian *pro lesione Fidei*, they cannot award one to pay the Debt, but only a Corporal Penance, which he may commute.

4 Ed. 4. 37. And if a Man be sued in the Spiritual Court, and the Judges there will not E
grant unto the Defendant the Copy of the Libel, then he shall have a Pro-
37 H. 6. 9. hibition directed unto them for to surcease, &c. until they have delivered the
22 Ed. 4. 2. Copy of the Libel, according unto the Statute made Anno 2 H. 5. And also
the Defendant may have an Action against them upon the said Statute, if they
will not deliver the Copy of the Libel, whether the Cause in the Libel be a
spiritual Cause or not.

37 H. 6. 9. (a) If a Man maketh a Devise of Lands or Tenements deviseable, the F
Ashton. Party to whom the Devise is made shall not sue in the Spiritual Court to
46 Ed. 3. 32. have the Lands or Tenements so devised; but if he do, the other Party shall
8 H. 8. Pro- have a Prohibition. But if he deviseth Goods or Chattels Real, as a Term
hibition 19. for Years, or a Ward; there he may sue in the Spiritual Court for such
Things.

13 H. 6. Pro- If a Man sueth in the Common Pleas for Trespass, if he sue him in the G
hibition 3. Spiritual Court for the same Cause, he may (b) shew the Matter in the Com-
4 Ed. 4. 37. mon Pleas, and shall have a Prohibition from thence directed to the Judges,
38 H. 6. 14. &c. And so always when the Matter is depending in the Common Pleas, if
12 H. 7. 16. he sue for the same Cause in the Spiritual Court, he shall have a Prohibition
out of the Common Pleas.

31 H. 8. But a Man shall have a Prohibition out of the Chancery or the King's H
Br. Prohibi- Bench upon his Surmise, surmising that he is sued in the Spiritual Court for
tion 17. a temporal Cause, &c. although he be not sued in the King's Bench, or other-
2 Ed. 4. 11. where, for that Cause.

2 Ed. 4. 11. If a Man sue a *Quare impedit*, and deliver it of Record, as he may, and I
V. 18 H. 8. 5. afterward the Defendant, or his Clerk, sue a Citation against the Presentee of
the Plaintiff; the Plaintiff in the *Quare impedit* shall have a Prohibition in the
Common Pleas before the Return of the Writ of *Quare impedit*, because it
appeareth on Record that such a *Quare impedit* is depending.

Ante 41. G. If a Parson grant to one by Deed, that he shall be discharged of Tithes K
8 Ed. 4. 13. of his Lands, and afterwards he sueth in the Spiritual Court for the Tithes,
[44.] &c. it is said that he shall not have a Prohibition, because he may pretend
this Matter in the Spiritual Court, to discharge him of the Tithes. But if
it were upon a Composition made before Time of Memory, and now the
Parson sueth for the Tithes of those Lands, there he shall have a Prohibition
against the Parson, &c. *Quere* the Diversity, for I think he shall have a Pro-
hibition in both Cases. The Case is *M. 8 Ed. 4. 14.*

Vide Com. If a Man promise one ten Pounds, if he will marry his Daughter; if he A
350 and 309. marry the Daughter, and the other will not pay the Money, he shall not sue
37 H. 6. 8. for the same in the Spiritual (c) Court. But if he promise one with his
45 Ed. 3. 24.

(a) See 22 Ed. 4. Consultation 5. 8 H. 5. hibition: *Quere*. See 38 H. 6. 14. *Rast. Entr.*
pl. 19. 38 H. 6. 14. 40 Ed. 3. 36. 13 H. 6. *pl. 484.* 10 H. 6. 21.

(b) See 7 H. 4. 1. *Si vero agatur in Curia Christianitatis tantummodo ex officio*, and the Party has Correction, it seems he shall not have a Pro-
(c) See the Case of *Josline and Shelton*, 4, 5 *Pb. & Mar. & 33 Ed. 3. Jurisdiction 25. Post.* 58. S. 14 Ed. 4. 6. 17 Ed. 4. 4. b. 15 Ed. 4. 32. a.

Daughter in Marriage ten Pounds, &c. if he doth marry the Daughter, and he do not pay the Money, he may sue in the Spiritual Court for the ten Pounds, because it concerneth Matrimony. Which Diversity see in 22 *Ed.* 3. *Lib. Aff.* Vide 50. S. 22 *Aff.* 70. 17 *Ed.* 4. 4. 15 *H.* 3. Prohib. 22. 16 *H.* 3. *Ibid.* 24.

- B (a) If the Testator charge his Executors to pay his Debts to his Creditors, if they do not pay them, the Creditors may sue in the Spiritual Court; and they shall not have a Prohibition, for that this Charge of the Testator is as a Devise unto his Creditors: *Quod vide H.* 9 *Ed.* 3. *Prohibition* 17.
- C (b) If a Man giveth Goods in Marriage with his Daughter, and afterwards they are divorced; the Wife may sue in the Spiritual Court for the Goods, and no Prohibition will lie thereof. 13 *H.* 3. Prohib. 21. Vide 139.
- D If a Stranger do disturb the Executors to perform the Will, they may sue him in the Spiritual Court, and no *Prohibition* lieth against them for so doing. *T.* 4 *H.* 3. *Prohibition* 28. *acc.* F. Prohibition 28.
- E If a Man sueth a Prohibition because another draweth him into the Spiritual Court for an Advowson of a Church, &c. upon the Attachment upon the Prohibition sued he may declare, that he did deforce him of great and small Tithes, &c. 4 *Ed.* 3. 27. 29. Prohibition 2.
- F If one Parson sueth another Parson in the Spiritual Court for Tithes of the Profits arising in one hundred Acres of Lands within the Bounds and Limits of his Parish being, for which the Patron of the other Parson purchaseth an *Indicavit* unto the Spiritual Judge for to surcease, &c. then may the Parson who sueth in the Spiritual Court come into the Chancery, and have a Writ unto the Bishop for to inquire of the Value of the Church, according to the Tax of Tithes now current, as upon the Value of the Tithes demanded, and to certify the King in the Chancery thereof by Letters under his Seal, with the Writ: And it seemeth he ought so to do before he have a Consultation granted in that Case. Post. 45.
- G If a Bishop will cite or compel the King's Chaplains, or the Masters of the Chancery, which are the King's Chaplains, to make their personal Residence upon their Benefices when they are attending in the King's Service, they may have a Prohibition unto the Bishop, &c. and upon the same an *Alias*, *Pluries* and Attachment. But if they be not attending in the King's Service, then the Ordinary may compel them to make personal Residence upon their Benefices; and the Form of the Writ is such:

The King to the Worshipful, &c. Whereas our Clerks, while they continue in our Service, ought not to be compelled to keep Residence personally upon their Benefices, or to be otherwise disquieted or molested hereupon; We and our Progenitors, formerly Kings of England, having always, from Time out of Mind, hitherto used these Liberties and Privileges for our Clerks, command you, that you in no wise compel our beloved Clerk, Parson of the Church of B. &c. who by our Command continually attends our Service in our Chancery, to personal Residence upon his Benefice, while he stays in our same Service, &c.

(a) 7 *Eliz.* 305. *Bro. Debt* 135. 22 *Ed.* 3. *Aff.* 70. (b) 26 *H.* 8 7. 13 *Ed.* 3 or *H.* 5. 13.

And if the King's Chaplain be chosen Dean of any Church, which Office requireth personal Attendance and Residence, and the Bishop will compel him to take the Deanery which requireth that personal Residence, by spiritual Censures and Citations, &c. then he shall have a Prohibition unto the Bishop by these Words: *We strictly prohibit you, that you by no Means whatever compel him the said A. to keep any Residence on his Benefice, or to take upon him the Duty aforesaid, or require any Thing for Residence of this Kind, while he so attends our Service aforesaid; and if any Thing in the Fruits, or other Goods of the Church of our said Clerk, have been put under Sequestration upon that Occasion, by him the said Bishop or his, you cause the same to be released without Delay, &c.* And so if the Clerk abide in the King's Service in the Company of our beloved and trusty R. of P. in the Parts of *Gascony*.

And so if the Bishop will amerce the King's Chaplains, and compel them to pay a certain Sum of Money for Non-residence, they shall have a Prohibition.

Vide Stat. Articuli Cleri, cap. 2.

If one sue another out of the Realm for Debt, or other Cause, whereof the King's Court may have Conusance, he shall have a Prohibition against him, and an Attachment upon the same, if, &c. And so if one Clerk sueth another upon the Title of Collation of any Prebendary out of the Realm, &c. he may have this Prohibition: And the King may send a Writ to him who is so sued out of the Realm, commanding him upon Pain of Forfeiture of so much as he may forfeit, that he go not out of the Realm for to answer thereunto, whereof the Conusance doth appertain unto the King's Court. And also the King may send unto the Prebend, if he be sued out of the Realm for Title of the Prebendary, to prohibit him upon Pain of Imprisonment and of Forfeiture of what he may forfeit, that he do not go out of the Realm, nor answer there by his Proctor or otherwise, &c.

[45.]

And if any Man do purchase from the Court of *Rome* any Citation against any Clerk or others, directed unto the Archbishop of *Canterbury*, or unto others, to cite such Persons to appear before the Pope, &c. and to answer for the Collation or Presentation unto any Benefice or Prebendary; then the King shall send his Writ of Prohibition unto the Archbishop, or other to whom such Process is directed, that they do not cite, &c. and may have another Prohibition to the Party himself, and an Attachment upon the same, &c.

And when a Consultation is once duly granted, then the Court may proceed in the Spiritual Court, notwithstanding that the Party purchase a new Prohibition directed unto them, if the Libel be not changed: *Quod vide* by the Statute of 50 Ed. 3. c. 4.

Indicavit, ante 44.

The Writ of Prohibition, which is called *Indicavit*, most commonly lieth between four Persons, whereof two are Patrons and two are Clerks, and properly lieth where one Clerk sueth another in the Spiritual Court for Tithes, which do amount unto the fourth Part of the Value of the Church at the least; for if it doth not amount unto the Value of the fourth Part, but unto the fifth Part, the *Indicavit* doth not lie. And this Writ lieth for the Patron, and that Clerk who is sued in the Spiritual Court: And this Writ may be sued as well against the Judge as the Party. And the King may sue this

Writ

Writ where his Clerk is impleaded for Tithes amounting to the Value of the fourth Part of the Church, or of the Church itself. And this Writ of *Indicavit* lieth as well for the Patron, where his Clerk is impleaded for the Advowson itself, or such Vicarage, Prebend or Chapel, as well as if he were impleaded of the Tithes of the Church, Vicarage, Prebend or Chapel.

And it appeareth by the Register, the Writ of *Indicavit* which the King shall have where the Clerk is impleaded in the Spiritual Court for Tithes, not making Mention what is the Value of the fourth Part, is such:

The King to the Official of the Bishop, &c. and to his Commissaries, greeting: Whereas A. of B. Parson of the Church of W. holds all the Tithes forth coming of the Marsh, &c. of our Advowson, the Abbot of Battel claiming them to belong to his Church of, &c. draws him into Plea, &c. We prohibit you, &c. whether the Advowson of the same Tithes belongs to us or to the aforesaid Abbot, because Pleas, &c. And this Writ of Indicavit ought to be sued by the Patron before Judgment given in the Spiritual Court, for after Judgment given there, the Indicavit is void.

C And a Man shall not have an *Indicavit* before the Party in the Spiritual Court hath libelled there against the Defendant; and the Party who sueth the *Indicavit* ought to shew the Copy of the Libel in the Chancery, before he have the *Indicavit*. And when the Party hath libelled in the Spiritual Court, ^{31 H. 6. 17} and the Party is put to answer, then it is called and said, that the Suit is contested in the Court of Christianity.

D And *Indicavit* lieth for Tithes and Offerings, if Suit be in the Spiritual Court for them, as well as it lieth of an Advowson; and that for a common Person, as well as for the King. And the Writ of *Indicavit* shall not mention, that the Tithes and Offerings which are in Suit do amount unto the fourth Part of the Church, but *the Tithes forth coming of one hundred Acres of Land*, or of such a Manor: And if these Tithes be not to the fourth Part of the Value of the Advowson, the other Party may alledge and surmise the same, and have a Consultation. ^{4 Ed. 3. 26. 29. Prohibition 1.}

E And also *Indicavit* lieth, where one Party is Parson imparsoned, and the Clerk of the other Patron sueth him in the Spiritual Court for Tithes, &c. he may sue the *Indicavit*. And so if an Abbot be Parson imparsoned of a Church, and another Abbot is Parson imparsoned of another Advowson, and one sueth the other for Tithes appertaining to his Advowson, amounting unto the fourth Part of a Church, &c. the other shall have the *Indicavit* against him.

And if an Abbot be Parson imparsoned of an Advowson, and hath a Vicar endowed; then, if the Parson be sued in the Spiritual Court for the fourth Part of the Tithes of his Parsonage, he shall have an *Indicavit*. And so if the Vicar be sued for the fourth Part of the Tithes and Offerings of his Vicarage, the Parson, or he who is Patron of the Vicarage, shall have the *Indicavit*, because they are several Advowsons; the Parsonage one, and the Vicarage another; and there may be divers Patrons of them. *Quod vide Palch. 31 H. 6. in Title Indicavit. See West. 1. cap. 35.*

If Bailiffs, Mayors, or others, who claim Jurisdiction to arrest a Man upon F a Plaint before them, or to attach his Goods, &c. do arrest one for Trespass or Contract, who was not within their Jurisdiction, the Party arrested, &c. shall have a Prohibition directed unto them, &c. and the Form is such :

The King to his Bailiffs A. of N. Whereas it is provided by the Common Council of our Realm, that it may not be lawful for any of the same Realm, except for us and our Ministers, having special Authority for this Purpose, to attach any Persons passing through his Bailiwick or Dominion, to answer any Person upon Contracts, Covenants or Trespas made out of the same Bailiwick or Dominion; We command you, that you do not attach B. to answer any Person before you in your Bailiwick upon Contracts, Covenants or Trespas of this Kind, contrary to the Form of the Provision aforesaid; and if you shall have made any Distress thereupon, that you cause the same to be delivered, &c. And if they will not obey the same, he shall have an Attachment against the Bailiffs. And this Writ lieth as well upon Attachment of Goods, as for arresting of the Body.

[46.] If a Woman have Lands which she holdeth in Dower, or of Joint Purchase with her Husband, or of her own Inheritance, if the Sheriff have Process out of the Exchequer to levy the Husband's Debts which he oweth unto the King; or if the Sheriff have Process out of another Court to levy Debts due by her Husband to another Person; if the Sheriff will distrain in the Lands which the Wife holdeth, &c. the Wife shall have a Writ unto the Sheriff, that he do not distrain the Wife who holdeth such Lands, in the same Lands, for the Debt of the Husband; and the Form of the Writ is such :

The King to the Sheriff, &c. Whereas according to the Law and Custom of our Realm, Women ought not to be distrained in the Lands and Tenements which they hold in Dower of the Gift of their Husbands, or which are of their own Inheritance, or which they have purchased to themselves, for paying the Debts of their Husbands; and you, as we are informed from her heavy Complaint, do distress B. who was the Wife of A. in her Lands and Tenements which she holds in Dower of the Gift of the same A. and also which were of the Inheritance of her the said B. and of the Purchase of her the said B. We command you, that you do not distrain or cause to be distrained her the said B. in her Lands and Tenements which she holds in Dower, or which are of her own proper Inheritance, or of the Purchase of her the said B. for the paying the Debts of the aforesaid A. some time her Husband, contrary to the Law and Custom aforesaid, &c. and the Distress, if any, &c.

And there is such a Writ unto the Sheriff, where Process cometh unto the Sheriff out of the Exchequer, to levy the Debts of the Husband, *per summ' Scaccarii*, &c. And in that Case she may sue a Writ unto the Barons of the Exchequer, that they surcease to make out such Process to the Sheriff to distrain the Wife in such Lands, &c. Another Form of Writ unto the Barons of the Exchequer, to surcease for to distrain the Wife, &c. and with a Proviso in the same Writ, that they levy the Debts of the Husband's Executors, or of his Heir, or of the Lands and Tenements which were the Husband's, &c.

And

A And if a Man sue another in the County Court for Debts (a) or Chattels, Vide ant. 34. which do amount to the Sum of forty Shillings; then the Party shall have a Prohibition against him who is Sheriff, that he shall not hold Plea thereof, and that he tell the Party that he sue in the Common Pleas; and the Writ is such:

The King to the Sheriff, &c. Whereas Pleas of Chattels and Debts which amount to the Sum of forty Shillings, or exceed it, according to the Law and Custom of our Realm, ought not to be pleaded without our Writ; and as we hear A. hath impleaded B. touching a Debt of one hundred Shillings in your County without our Writ; We command you, if it be so, that then you absolutely supersede that Plea from being further holden in the County aforesaid without our Writ, and on our Behalf that you tell the aforesaid A. that he may upon Request obtain our Writ of the Debt aforesaid against the aforesaid B. if it shall seem to him expedient. Witness, &c. And if such Writ be sued in another Court, then the Writ shall be directed unto the Bailiff of the Court, in such Form:

The King to his Bailiffs I. of N. or to his Bailiffs of N. greeting: Whereas Pleas, &c. (as above, until) without our Writ; and as we hear A. impleads B. for this, that the same B. may render to the aforesaid A. Chattels to the Value of ten Pounds, before us in the Court of your said Lord of N. or in our Court of N. without our Writ; We command you, if it be so, that then you wholly supersede that Plea, &c. (as above). And if they do not surcease upon this Writ, then he shall have an Alias and Pluries, and an Attachment against them, and also an Attachment against the Party himself.

And if a Man do owe unto another Man five Marks, and he sue several Plaints for the same in the County Court, or in any other Court against the Debtor, he shall have a Prohibition thereof, and rehearse the Matter, and that he would defraud the King's Court of its Jurisdiction, and also the Party of his Answer, &c. commanding them that they do not proceed, &c. and that he command the Party to sue at the Common Law in the King's Court; and if they will not surcease, he shall have an Alias and Pluries, and Attachment upon the same, &c.

And so it is if a Man will sue in the County Court a Writ of Covenant or Trespass, unto his Damage of forty Shillings or more, the Party shall have a Prohibition for to surcease, and thereupon an Alias, Pluries and Attachment, &c.

And so if the Executor sueth in the County, or in a Court Baron, for a Debt of five Marks by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation; now the Defendant may shew the same, and plead unto the Jurisdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do surcease, &c. and if he have Judgment in any of the Plaints sued for Parcel of the Debt, yet in the Prohibition he may prohibit him in the Plaints which are depending, and that Execution of the Judgment cease for the Residue. See 15 H. 5. Prohibition 15. contr.

(a) And so if he split an entire Contract into several Sums under forty Shillings. See 19 H. 6. 54. it seems the Judgments for such Sums are *coram non Judge*, and void; at least, voidable by False Judgment. *Kekw. 106. a.* See 19 H. 6. 5. a.

And also if a Man sue in the County a Plaint of twenty Pounds, and hath Judgment to recover in that Court; yet the Defendant may sue a Prohibition, commanding the Sheriff and the Suitors that they do not execute the Judgment, although he have before admitted the Jurisdiction.

And so after Judgment given, and Execution awarded in the County, or in other Court Baron, which hath not Power to hold Plea of Debt of the Sum of forty Shillings, &c. or of Damages in Trespass amounting to such Sum, or more, the Party Defendant shall have a Writ of Prohibition unto the Bailiffs, or unto the Sheriff or Officer of the Court, that they do not Execution; and if they have distrained the Party to make Satisfaction, that then they release the Distress, and that they revoke what they have done therein.

There is a Rule in the Register thus: *If Pleas of Chattels or Debts which amount to the Sum of forty Shillings, or exceed it, are pleaded in the County or in other Court without our Writ, which is wanting, let not therefore a Writ of False Judgment, nor Recordare, nor a Writ of Executio Judicii, be made, except in Courts of Cities, and other Courts which have Jurisdictions of this Kind, according to Custom.*

[47.]

1 Ed. 4 15.
Justices lieth
without Vi
& Armis.
Littleton.

And if a Man sueth another in the County, or other Court, upon a Plaint of Trespass *Vi & Armis*; the Defendant may sue a Prohibition unto the Sheriff, or unto the Bailiff, in such Form:

The King to the Bailiffs of B. &c. Whereas Pleas of Trespasses done with Force and Arms against the Peace in our Realm of England, ought not to be pleaded without our Writ, according to the Law and Custom of the same Realm; and as we hear W. hath impleaded R. of T. before you in the Court of your aforesaid Lord, of divers Trespasses done to the same W. by the aforesaid R. with Force and Arms against our Peace (as it is said) to the great Damage of him the said W. and contrary to the Law and Custom aforesaid: We command you, if it be so, that then you do wholly supersede the Pleas aforesaid from being further holden before you, telling the aforesaid W. on our Behalf, that he may upon Request obtain for himself our Writ of Trespass aforesaid against the aforesaid R. if it shall seem expedient to him. Witness, &c.

And if one Man sueth another in a Court Baron, or other Court which is not a Court of Record, for Charters concerning Inheritance or Freehold, he shall have a Prohibition, and the Form is such:

The King to the Bailiffs of R. of P. greeting: Whereas Pleas of Detinue of Charters or Writings touching Freehold ought not to be pleaded in any Courts which are not of Record, without our Writ, according to the Law and Custom of our Realm; and E. hath impleaded W. before you in the Court aforesaid of your Lord of P. without our Writ, for this, that the same W. render to the aforesaid E. three Charters, as we hear: We command you, if it be so, that then you do wholly supersede that Plea from being further holden before you in the Court aforesaid without our Writ, and that you tell the aforesaid E. on our Behalf, that he may upon Request obtain for himself our Writ of Detinue of Charters aforesaid against the aforesaid W. if it shall seem expedient to him. Witness, &c. in the eighth Year. This Writ was ordained by the Council at York.

Quare non admisit.

C IF a Man do recover an Advowson, and hath a Writ unto the Bishop to admit his Clerk, and he will not admit him; then the Party may sue an *Alias* and *Pluries*, or Attachment, &c. or may sue a Writ out of the Chancery, or out of the Common Pleas, at his Election, *de quare non admisit*, as well in the Term-time as in the Vacation; but the best is in the Term-time to sue in the Common Pleas: And in this Writ it behoveth him to certify the Recovery. And the Form of the Writ of *Quare non admisit* for the King is such:

See 12 Ed. 3.
Quare non admisit 6.

The King to the Sheriff, &c. Summon, &c. A. Bishop of Winchester, &c. that he be before us such a Day, &c. wheresoever, &c. Wherefore, when we lately in our Court before us had recovered, &c. And he shall say in the Writ, If the King shall make you secure, because the King shall not find Pledges, &c.

D And if the King do recover his Presentment in the Common Pleas, yet he may sue a *Quare non admisit* in the King's Bench before himself.

E And so if a common Person do recover in a *Quare impedit* in the Common Pleas, and the Record is removed by a Writ of Error into the King's Bench, and there affirmed; then he shall have a Writ unto the Bishop there, and ought to sue *Quare non admisit* against the Bishop there upon the Record, otherwise not. After the Record removed by a Writ of (a) Error, the Plaintiff who recovered shall not have *Quare non admisit* until the Judgment be affirmed in the King's Bench.

F And the *Quare non admisit* ought to be sued in the County where the Bishop refuseth the Plaintiff's Clerk.

G And in the *Quare non admisit* he shall recover only Damages, and shall not have his Clerk admitted by this Writ.

H And if the Bishop hath admitted and instituted him, and the Archdeacon will not induct him; he hath no Remedy but only in the Spiritual Court, as it is said; for it is a good Plea for the Bishop to say, That he admitted the Clerk, and sent his Letters unto the Archdeacon who will not induct him. And I conceive that if the Archdeacon refuse to induct the Clerk, that the Clerk shall have an Action on the Case against the Archdeacon, because the Induction is a Temporal Act. As if the Sheriff upon *Habere facias seisinam* will not admit him into Possession, he shall have an *Alias* and *Pluries*, (b) and Attachment against him. But some have said, that he shall have a Citation against the Archdeacon in the Spiritual Court, and punish him there; for

(a) One Defendant shall not have Oyer of the Record; *vide hic* 48. F. 16 Ed. 3. *Quare non admisit* 3. But by *Hill*, if the Record be in another Place, the Justices shall forceale till they have inspected the Record. See accordant 17 Ed. 3. 55. by *Shard*, in a *Quare non admisit* in the Rolls. For the Reversal of the first Judgment is a Reversal of the second. See 26 Ed. 3. 35. *contra*, & *quære hic*, if it be a new Original. Note also 26 Ed. 3. 75. accordant.

(b) See 13 Ed. 3. *Quare non admisit* 4. and 9 Ed. 3. *ibid.* 13. a *Quare non admisit*, against an Official. *Alioquin Rex se capiet ad illum.*

perhaps

perhaps he may alledge a special Cause, for which by the Spiritual Law he ought not to be inducted, which Cause cannot be determined in the Temporal Court. *Ideo quære.*

V. 21 H. 7. 3. And if the Vicar-general do refuse to admit the Clerk, the *Quare non admisit* I
A Man recovered in a shall be brought against the Bishop for that Refusal; and if the Bishop do re-
Quare impedit, and had fuse the Clerk, and afterwards dieth, *Quare non admisit* is maintainable against
a Writ to the the Guardian of the Spiritualities for this Refusal made by the Bishop.
Bishop, who *Tamen quære.*
returned, that (a) The Bishop is not bounden to admit the Clerk, if the Church be full K
the Clerk who of the Presentment of another Party who is not Party to the Recovery.
was in had re- If the Bishop do refuse the King's Presentee, and doth afterwards admit L
signed, and him, yet the King shall have *Quare non admisit* against him for that Refusal;
that the and so shall a common Person in like Manner have, as I conceive.
Church was
full of the Presentment of J. H. and upon that Return the Plaintiff had a Scire facias against the Bishop: And
after the Return the Opinion of the Court was, That he should have *Quare non admisit*.

In a *Quare non admisit* the Bishop may say, that he did present for Lapse. M
And *Quare non admisit* was maintainable against the Bishop's Official. *Mich. N*
9 Ed. 3.

[48.] If a Man do recover in a *Quare impedit* his Presentment unto a Chapel A
which is donative, then I think that he shall have a Writ unto the Sheriff to
put the Clerk who recovered into Possession (b).

And in a *Quare non admisit* the Bishop may say, That the Church is liti- B
gious betwixt two, &c.

If a Man hath a donative Chantry, which is of the Nature that one name C
unto another his Clerk, and that the other shall institute and induct him;
there if he who hath the Nomination be disturbed, he shall have a *Quare*
impedit, and if he do recover, he shall have a Writ unto him who ought
to instal and induct him, to put him in Possession. But if he be disturbed by
him who ought to instal him, then he ought to have a *Quare impedit* against
him: And after that he hath recovered, he shall have a Writ to him who dis-
turbed him, to put his Clerk into Possession; or he shall have a Writ unto the
Sheriff, to put the Clerk of him who recovered into Possession, at his Election.

(a) And Note; The Bishop shall be excused, if he return the (whole) Matter on the Writ, *ad admittendum Clericum*, whereupon the Party may have a *Quare non admisit* against the Bishop, to try the Truth of the Return, and also a *Scire facias* against the Incumbent to try his Title. 9 Eliz. Dyer 260. a. *Basset's Case*.

Also, if the Bishop be inhibited by the Archbishop to admit the Clerk, he shall be excused, and a Writ shall issue to the President of the Arches. *Parl. 22 Ed. 3. n. 63.*

(b) See 14 H. 4. 11. accordant, by *Hankf.* of a Free Chapel, which one has by the King's Grant.

Quare incumbravit.

- D** **Q**UARE *incumbravit* (a) ought to be sued in the County where the Church is, because the Wrong is done here.
- E** And *Quare incumbravit* doth not lie but where the Plaintiff recovereth by Judgment of Court. And the King may sue a *Quare incumbravit* in the King's Bench, although the Record of Recovery be in the Common Pleas, but a common Person cannot do so. 17 Ed. 3. 74.
- F** (b) And *Quare incumbravit* may be sued in the Common Pleas, although the Record be removed in the King's Bench by a Writ of Error, or in the Treasury; but if the Record be in the King's Bench, it seemeth then that the Party shall sue the *Quare incumbravit* there, &c. 17 Ed. 3. 74. for all.
- G** And *Quare incumbravit* is an Original Writ, and shall issue out of the Chancery, and not out of the Common Pleas.
- H** And *Quare incumbravit* doth not lie until the Party hath sued the Writ of *Ne admittas* (c) unto the Bishop; for if the Bishop do incumber the Church before the Writ of *Ne admittas* sued, then the Party shall have a *Quare impedit*, and not *Quare incumbravit*; for the Bishop cannot have Notice until the *Ne admittas* be delivered unto him. And if the (d) Bishop, after the *Ne admittas* delivered unto him, do admit his Clerk for whom it is found by the *Jure Patronatus*, yet the other Party shall have *Quare incumbravit* against him. Ante 35. G.
- I** (e) And in *Quare incumbravit* he shall have Judgment to recover Damages, and also his Presentment. But so shall he not have in *Quare non admittit*, but only Damages.

(a) *Per Thorp.* If the Bishop incumber where no Debate or Dispute is, yet this Writ lies. 17 Ed. 3. 74. b. 21 Ed. 3. *Quare incumbravit* 3. and so by *Wilby*, if the Bishop incumber within the six Months, though no Plea be pending, 18 Ed. 3. 17. b. which was admitted by *Hill* and *Pole*, and that there shall be a special Count, and not of a Recovery.

(b) In a *Quare incumbravit*, *per Thorp* & *Green* adjudged. 1. That one shall have Oyer of the Record. 2. That one shall have this Writ before Judgment. 3. That the Writ shall be returnable in the same Court where the original Judgment was given. 4. Where the Writ supposes the Plea pending touching the Church, it is good. 5. That the Writ shall not make Mention of the Place where the Recovery was had. 6. It need not mention whether he incumbered within or after the six Months, but that shall come by way of Answer. 7. If one recover within the six Months, and the Bishop incumbers, he shall have a *Quare incumbravit*

within the six Months. 8. It is no Plea that the Record is removed by Error. 17 Ed. 3. 50. 54, 74, or that he has received the Plaintiff's Clerk at his Nomination. 21 Ed. 3. 3. a.

(c) *Note*; The Issue in that Case shall not be on the Day that the Prohibition was delivered, but whether he received the Clerk before the Prohibition delivered or not. 19 Ed. 3. *Quare incumbravit* 2.

(d) See accordant 19 Ed. 3. *Quare incumbravit* 2. 18 Ed. 3. 17. And the Reason is because the Patron need not shew the Right of Patronage to be in him, for the *Ne admittas* with the Recovery gives him the Action, tho' he be not the true Patron See 8 R. 2 *Quare impedit* 199. a *Quare impedit* lies in such Case, although he has not presented to the same Avoidance. 17 Ed. 3. 75. Also the Plaintiff need not count that the Bishop refused his Clerk, for the *Incumbravit* is a Refusal. 18 Ed. 3. 17. b.

(e) See 21 Ed. 3. 3. accordant; but his Temporalities shall not be (seized) at Common Law.

(x) And

(a) And in 21 Ed. 1. it was adjudged, That a Man shall have a *Quare in-* K
cumbrauit without making Mention of any Recovery in the Writ, or in the
Count. But by the Rule of the Register he ought to mention the Recovery;
34 H. 6. 39. and that seems to be the better Opinion.

(a) And after the *Ne admittas* delivered, if the six Months pass, the Bishop L
may present his Clerk for Lapse, and shall not be charged by the *Quare in-*
cumbrauit for that Presentation; but it seemeth he cannot admit the Clerk
of the other Man after the six Months past, for that shall be against the Writ
of *Ne admittas* delivered unto him. And also if the Bishop do present the
Clerk of the other Party after the six Months, who had presented unto him
before, that Presentment maketh Title to the Party, although it be after the
six Months; by which it seemeth that the *Quare incumbrauit* lieth then for the
Party.

M. vide ac-
cordant
19 Ed. 2.
Quare incum-
brauit 2.

And if the Plaintiff be Nonfuit in *Quare incumbrauit*, he may sue a new M
Quare incumbrauit, and may vary from his Count upon the first Writ. And
it is a good Issue, that he did not incumber, &c. after the Prohibition deli- N
vered unto him.

And if a Man hath a *Quare impedit* depending, and he sue a *Ne admittas* O
to the Bishop, and afterwards the Bishop do incumber the Church within the
six Months with his Chaplain, or with the Defendant's Chaplain, then the Plain-
tiff shall have *Quare incumbrauit*; and the Form of the Writ shall be such:

The King to the Sheriff of Lincolnshire, greeting: If A. shall make you secure,
&c. then summon H. Bishop of Lincoln, that he be before our Justices, &c. to
shew wherefore, when the same A. in our Court (b) before the Justices aforesaid,
by the Consideration of our Court aforesaid, had recovered his Presentation to the
Church of I. against B. yet the same Bishop, pending the Plea in the aforesaid
Court before the before-mentioned Justices, hath incumbered the same Church, to the
no little Damage and Grievance of him the said A. and contrary to the Law and
Custom of our Realm: And have you there, &c. Witness, &c.

And if he do not appear at the Return of the Writ of *Incumbrauit*, nor at P
the *Alias*, then the *Distingas* shall be in the End, *In manifest Contempt of us*
and our Commands, and to the manifest Weakening the Consideration of our Court:
And have there, &c.

I

(a) A *Quare incumbrauit* was brought by the
Tenant of one *Audley* against the Bishop of *Exe-*
ter, and counted that the Church avoided the
13th of *April*, by the Death of *I. S.* and that
Debate arose between him and *William Cham-*
pernoon, and that the Plaintiff recovered in a
Quare impedit, and that pending that Suit, he
delivered to the Bishop a Prohibition at such a
Place, and that the Bishop incumbered within
the six Months; the Bishop pleads and shews,
that the *Quare impedit* bore Date the 9th of *April*,
and so was brought in Wrong to the Incumbent;
sed non allocatur. For suppose it was brought,
living the Patron, if the Parson dies pending
the Plea, and the Bishop incumber it, and after-
wards the Plaintiff recovers, a *Quare impedit* lies.

Whercupon the Bishop taking no Notice of the
Prohibition served on him, pleads, that the
Church had been void twelve Months, and that
six Months passed before the Recovery, whereby
the Bishop presented as Ordinary, *absque hoc*,
that he incumbered within the six Months, and
resolved that what is said of the Time of the
Avoidance shall not go to the Incumbance;
wherefore *Pole*, &c. took Issue, whether he in-
cumbered within six Months after the Avoidance,
&c. 18 Ed. 3. 17.

(b) And Note; This Writ has been adjudged
good, without saying before what Justices he re-
covered. 18 Ed. 3. 17. in the Case *supra* of *H.*
de Audley.

And

Q And if a Man hath a Writ of Right of Advowson depending betwixt him and another, and the Church void pendent the Writ, the Plaintiff shall not have *Ne admittas* to the Bishop, nor the Writ of *Quare incumbravit*, although the Bishop incumber the Church; for the Demandant shall not recover the Presentment upon this Writ, but the Advowson; and if he hath Title to present, he may present, and have a *Quare impedit*, if he be disturbed.

Juris utrum.

- R** *JURIS utrum* is a Writ of the highest Nature that a Parson can have; and [49.]
 he shall have this Writ where the Lands or Tenements are aliened by his Predecessor, or if a Recovery be had against the Predecessor by Default, or by Reddition, or for Want of Pleading of the Predecessor, where he hath not prayed in Aid of the Patron and Ordinary. But if he do pray in Aid of the Patron and Ordinary, and they join in Aid, and render the Land, or confess the Action, then the Successor of such a Parson shall not have this Writ against that Recoveree: And also if a Man recover by Action tried against a Parson's Lands or Tenements, by Verdict, and the Parson doth not pray in Aid of the Patron and Ordinary, yet his Successor shall have a *Juris utrum*, and shall not be put to a Writ of Attaint. *Post. 50. D.*
- A** And if a Man intrude into Lands and Tenements after the Death of a Parson, the Successor shall have this Writ of *Juris utrum*: And so if a Parson be disseised of Lands and Tenements, Parcel of his Rectory, and dieth, his Successor shall have a *Juris utrum* (a).
- B** And also a Parson may have an Assise of Lands or Tenements of his Rectory, or a Writ in the *Quibus*, in the Nature of an Assise, or a Writ of *Entry* in the *Per* or *Cui*, or in the *Post*, upon a Disseisin made to himself, but not upon a Disseisin made to his Predecessor, but shall be put to sue a *Juris utrum*, &c. 20 *Ed. 3. Juris utrum 5.*
- C** Also a Parson may have a *Cessavit*, if his Tenant who holdeth of him cesseth, &c. or a Writ of *Escheatry*, if his Tenant die without Heir. And by the Statute of *West. 2.* he may have *Quod permittat* of common Pasture. *Vide 57. e.*
- D** And if a Parson with the Assent of the Patron and Ordinary leaseth his Glebe Lands for Life, and the Tenant alieneth in Fee, or loseth by Default; it seemeth the Parson who leaseth the Land shall have a *Corsimili casu* during the Life of the Tenant for Life; and after the Death of the Tenant for Life, a Writ of *Entry ad communem Legem*. *Vide 50. H.*
- E** And if an Abbot or Prior be Parson imparsoned of a Church, and alieneth the Land of the Rectory, his Successor shall have a *Juris utrum* to recover the Land, and not other Writ, because he shall have that as Parson.

(a) See 26 *H. 8. 3.* 33 *Ed. 3. Ad del Roy 163.*

And if a Man leaseth Lands unto one for Life, and afterwards granteth **E** the Reversion by Licence unto a Parson and his Successors, and the Tenant attorneth, and after the Tenant for Life loseth the Land by Default, or alieneth in Fee; the Parson shall have a Writ *de consimili casu* during the Life of the Tenant for Life, and after his Death he shall have a Writ of *Entry ad communem Legem, &c.*

And if a Parson lose by Action tried, or loseth by Default, his Successors **C** shall have a Writ of Error or Attaint.

And if a Reversion be granted unto a Parson and his Successors by Licence, **H** he shall have a *Quid juris clamat*; or if the Services of a Tenant be by Licence granted unto a Parson and his Successors, he shall have a *Per quæ servitia*: And so of a Writ of *Quem redditum reddit, &c.*

Cap. 11.
Par. 49.

And so if a Parson be Tenant in Common of a Wood, or other Land, in **E** the Right of his Church with another, and the other Tenant do Waste in the Wood, or Land, *&c.* the Parson shall have a Prohibition; and if he do Waste, he shall have a Writ of Partition, and the Place wasted shall be assigned to the other Party by the Statute of *West. 2. cap. 22.* But if a Parson be Patron of a Vicarage, and the Vicarage void, and a Stranger doth present, the Parson shall have a *Quare impedit* or *Darrein Presentment*: But if the six **K** Months pass, he shall have a Writ of Right of Advowson, because that that Writ is given only for him who hath the intire Fee and Right in him, and the Parson hath not the same; for the Right is in the Patron and Ordinary.

20 Ed. 3. *Ju-*
ris utrum, &c.
Old N. 125.
contra.

Nor shall a Parson have a Writ of Right *Sur disclaimer*, nor a Writ of **L** Customs and Services, nor an *Injuste vexes*, nor such Writs as are grounded upon the mere Right. But it seemeth he may have *Contra formam Collationis*, or *Feoffamenti*, and a Writ of *Mesne*, and *ad Terminum qui præterit, &c.* and such Possessory Writs which are grounded upon the mere Right.

And a Parson or a Vicar shall have a Writ of *Juris utrum* against those who **M** are several Tenants; and then the Form of the Writ shall be such:

(a) *The King to the Sheriff of S. greeting: If L. Bishop of London, Parson N of the Church of E. shall make you secure, &c. then summon twelve free, &c. of the Neighbourhood of E. that they be before our Justices at Westminster such a Day, ready by Oath to recognize, whether twenty Acres of Land with the Appurtenances in E. be Frankalmoign belonging to the Church of him the said L. or the Lay Fee of A. B. C. and D. and in the mean time let them view that Land, and summon, &c. the aforesaid A. who holds two Acres thereof, B. who holds eight Acres thereof, C. who holds five Acres and one Rood thereof, and D. who holds four Acres and three Roods thereof, that they be then, &c.*

(a) This Writ seems intended of an Appropriation, and not of a Commendam, and is not maintainable in, *&c.* 29 Ed. 3. 111.

And in this Writ it is no Ple. that the Tenant to say, that he is Parson of the Church or D.

and that this is the Freehold of his said Church, (Judgment *de Breve*) for the Plaintiff (Court) cannot take Notice there (or join Issue thereupon). 3 Ed. 2. *Brief* 785.

And

O And two Prebendaries may be one Parson in one Church, and then they shall join in a *Juris utrum*; and their Writ shall be such:

If W. Prebendary of the Prebend of N. and R. Prebendary of the Prebend of I. in the Church of the blessed Peter of York, Parson of the Church (a) of A. annexed to the Prebends aforesaid, shall make you secure, &c. then summon twelve, &c. (as last above).

P And where a Man is Parson of the Moiety of the Church, and another Clerk is Parson of the other Moiety of the same Church, then one may have a *Juris utrum*, and the Writ shall be such:

Q *If W. Parson of the Moiety of the Church of N. shall make you secure, &c. then summon twelve, &c. by Oath to recognize whether, &c. be Frankalmoign belonging to the Moiety of him the said W. of the Church aforesaid, or Frankalmoign belonging to the other Moiety of R. Parson of the other Moiety of the Church aforesaid, &c. And Dean and Chapter may have *Juris utrum* in special Case where they are Wardens of a Chantry, thus:*

R *The King to the Sheriffs of London, greeting: If the Dean and Chapter of the Church of Saint Paul, London, Guardians of the Chantry at the Altar of the blessed Mary in the Church of Saint Paul, London, ordained for the Soul of Richard D. shall make you secure, &c. then summon, &c. of the Neighbourhood [50.] of the City of London, that they be before our Justices at Westminster such a Day, &c. whether twenty Shillings Rent, with the Appurtenances in the Suburbs of London, be Frankalmoign belonging to the Chantry of them the said Guardians at the Altar aforesaid, or the Lay Fee of, &c. and in the mean time let them view the Tenements whereof the Rent issueth, &c. Witness, &c.*

A Where a Parson alieneth the Right of his Church with Warranty, and afterwards the Alienee is impleaded, and voucheth the Parson, who entereth into the Warranty, and loseth by Action tried, his Successors shall have a *Juris utrum* of the Seisin of his Predecessor, which he had before the Alienation. 40 Ed. 3. 27.
2 H. 4. 2.
*Ju-
re.*
11 H. 4. 13.

B And a Vicar shall have a *Juris utrum* against the Parson for the Glebe of his Vicarage, which is Parcel of the same Church. (b) If a Parson receive Rent or Fealty of the Tenant of the Land, which is aliened by his Predecessor, he shall not, during his Life, have a *Juris utrum*; but his Successors shall have *Juris utrum*. 11 Ed. 3. Ju-
ris utrum 19.
7 Eliz. Dyer
239, 240.
22 H. 8.

D If a Writ of Right be brought against a Parson, who joineth the Mife without praying in Aid of the Patron and Ordinary, and afterwards loseth by Default, his Successor shall have *Juris utrum*. Otherwise it is if he loseth the Land by Verdict, as it seemeth. B. Accept. 14.
2 Ed. 6.
B. Accept. 20.

E If a Parson have a Chapel annexed to his Parsonage, to which Chapel Glebe is appurtenant, the Parson shall have *Juris utrum* of the same.

F A Recovery in a *Cessavit* against a Parson by Default shall not bar his Successor, but he must have a *Juris utrum* against him who recovered.

(a) See the like Clause, *Rot. 26 Ed. 1. M. 10. dorso, Ecclesia de Ayrmur ipse ad Prebendariam de Grendale & Worsell, Diocesi. Exon.* See *Co. Lit.* 18. a.

(b) See 8 H. 5. 10. 2 H. 4. 5. 32 H. 8. Acceptance 14. Contra of a Lessee for Years. 11 H. 4. 25. See also 8 Ed. 3. 29. ante 49. I.

If a Chaplain of a Chantry lose the Lands of his Chantry by an Assise of *Novel Disseisin*, yet he himself shall have a *Juris utrum*, because that is a Writ of Right; and the Writ is to inquire, *Whether it be Free Alms of the Chantry or Lay Fee, &c.* H. 1 R. 2.

1 Ed. 1. Quod permittat 9.
32 Ed. 1. Comment. 24.
The Parson or Vicar shall have a *Quod permittat* in the *Debet* only, of his own Seisin or of the Seisin of his Predecessor; and may have that *Quod permittat* in the Nature of an Assise of *Mortdauncester*, upon the dying seised of his Predecessor.

In a *Juris utrum* the Plaintiff ought to be named Parson or Vicar, or such Name in Right of which Name he bringeth his Action: For if Abbot or Bishop, or a Dean, bring a *Juris utrum*, by reason of any Land which is Parcel of the Rectory annexed to the Bishoprick, or appropriated unto the Abbey or Deanry, they ought to be named Parsons of the Church in the Writ.

In a *Juris utrum*, if the Tenant at the first Day do make Default, Refummons shall be awarded; and if he make (a) Default again at the Summons returned, then the Jury shall be taken. (b) And the Tenant shall plead in a *Juris utrum*, as the Tenant shall plead in Assise of *Novel Disseisin*, *scil.* two or three Dilatories to the Writ; and if it be not found, then to pray the Jury to inquire of the Points of the Writ (c).

And where the *Juris utrum* is brought against several Tenants by several Summons in the Writ, it may be taken against one only for that Parcel, and afterwards against the others. But it is otherwise in an Assise of *Novel Disseisin*, if it be not in special Cases.

Writ of Consultation.

See Prohibition.
See the Stat. De circumspicte agatis, 13 Ed. 1. Rastal, Prohibition 3. 37 H. 6. 9. Ashton.

IF the Bishop cite any of the Parishioners of the Church to be contributory unto the Reparations of the Parish Church, (d) or of any Chapel annexed thereunto, if the Party who sueth the Prohibition directed unto the Bishop, suppose that he is impleaded of a Lay Fee in the Spiritual Court, the Bishop shall have a Consultation upon the Matter shewed in the Chancery, on the Part of the Bishop.

And so if a Man obtain any Judgment or Sentence in the Spiritual Court for a Legacy of Money, or other Chattels, if the Executors will sue a Prohibition for to delay the Execution of the Judgment, the Party shall have a Consultation.

And if any Chaplain of the King's free Chapels keepeth any Concubine, then the Bishop may cite him before him for to punish him: And if the Chaplain purchase a Prohibition, because the King's free Chapels ought not

(a) And therefore he shall not be effoined at the Refummons. 11 Ed. 3. *Effoin* 4.

(b) See 11 Ed. 3. *Juris utrum* 2. 40 Ed. 3. 29.

(c) See 17 Ed. 3. 43. accordant, *per Thurn.* But Note there, in a *Juris utrum* against A. and

B. by several Summons, nothing was done against A. but the Jury was taken against B. only, and found for the Demandant; but Stone would not give Judgment.

(d) See the *Regifer* 44. accordant.

to be visited by the Bishop; yet upon the Matter shewed the Bishop shall have a Consultation to proceed to correct him by Pain corporal, and not pecuniary.

Q If a Prior and Convent sue in the Spiritual Court, for Tithes and Mortuary, *Ƴ.* Parson of the Church of *C.* and an Abbot cometh into the Chancery, and surmisseth that *Ƴ.* holdeth the Church of his Patronage, and that the Prior, &c. claimeth the third Part of the Church of his own Advowson and Patronage, and prayeth an *Indicavit*, and the same is granted; now the Prior, &c. may shew this Matter in the Chancery, and have a Consultation, because that in the Statute of *Articuli Cleri* it is contained, that in Dimes and Mortuaries, when under these Names they are proposed, there is no Room for our Prohibition. See Articuli Cleri, cap. 1.

R If a Prior sueth in the Spiritual Court for the Moiety of the Tithes of four Plough-Lands, which he claimeth as appertaining unto the Church of *N.* whereof he is a Parson imparsoned, which are not of the Value of the fourth Part of the Church, if the other purchaseth an *Indicavit*, surmising that they are of the Value of the fourth Part; he who is sued in the Spiritual Court shall have a Consultation to proceed, *So that nothing be done touching the Advowson of any Part of the Church, the said Prohibition notwithstanding.*

S If a Man promise unto another with his Daughter in Marriage ten Pounds, by reason whereof the Party marrieth his Daughter, if he who promiseth the Money will not pay the Money, he shall be sued for the same in the Spiritual Court; and if he purchase a Prohibition, the other shall have a Consultation: And if he who promiseth the Money dieth, yet the Husband who married his Daughter may sue the Executors for that Money, or the Executor of his Executors, in the Spiritual Court. V. ant. 44. A.
14 Ed. 4. 6.
17 Ed. 4. 6.
Com. 309.
20 Ed. 4. 3.
[51.]

A And if any of the Parishioners do disturb any Parson or Vicar to carry his Tithes by the usual Ways and Passages, the Parson may sue in the Spiritual Court for this Disturbance; and if the other sue a Prohibition, upon the Matter shewed he shall have a Consultation.

B If a Parson or Vicar have a Pension out of another Church, and the Pension is kept from them, and another Parson taketh and claimeth the same; the Parson or Vicar who ought to have the Pension may sue for the same in the Spiritual Court. And so if a Parson or Vicar, or Master of an Hospital, sue for a Pension in the Spiritual Court, which they and their Predecessors have had Time out of Mind, &c. if the other Party purchase a Prohibition, upon the Matter shewed he shall have a Consultation: And yet it seemeth, that upon the Prescription he may maintain a Writ of Annuity at the Common Law, but the same is in his Election. (a) But if he once sue a Writ of Annuity at the Common Law for the same, and declare there upon the Prescription, then he shall not afterwards sue in the Spiritual Court for that An-

Pension.
See the Stat.
34 H. 8. c. 19.

(a) See 2 *Inj.* 491. That it is only suable at Common Law, yet in *Lec. 2k's Reports* 62 and 113. it is said by *Faulsten Justice*, that the Plaintiff hath his Election, to which the Court inclined. *Paſ.* 23 *Car.* 2. *B. R.* and yet in *Paſ.* 15 *Car.* 2. *B. R.* *Windham* cited a Case, 11 *Car.* 1. in *B. R.* where *Coke* held the Law to be contrary, and *Fitz.* Opinion denied.

nuity in the Name of a Pension; and if he do, it seemeth the Party may have a Prohibition against him.

38 H. 6. 19. And a Parson may sue in the Spiritual Court a Spoliation against another C
for taking of his Tithes, or for taking of any Pension which doth appertain to his Church, although they claim by several Patrons, and of their several Presentments: But this is intended only where the Tithes and Profits taken

Vide 36. A. and spoiled do not amount unto the fourth Part of the Value of the Church; for if they claim by several Patrons, and the Tithes, Profits or Pensions amount unto the fourth Part of the Church, then the Party grieved shall have an *Indicavit*, because the Title of the Patronage doth come in Debate,

18 H. 6. 19. *&c.* But if they claim by one and the same Patron, and of his Presentment, then one Parson shall have a Spoliation in the Spiritual Court against the other, although the Profits do amount unto a fourth Part, or a third Part, or the Moiety of the Church, because the Title of the Patronage comes not in Debate; and if a Prohibition be sued thereupon, the Party shall have Consultation.

For where the Title of the Patronage is in Question, there is no Spoliation.

If a Man have his Sheep lying and feeding for one Year in a Parish, the D Parson of the Parish may sue in the Spiritual Court for Tithe of Wool of those Sheep; and if the Party sue a Prohibition, he shall have a Consultation.

And note, That Consultation shall be granted and directed to the Party E himself who sued in the Spiritual Court, that he do not proceed in his Suit there; and also he may have a Consultation directed unto the Judge, commanding him to proceed there, notwithstanding the Prohibition aforesaid.

And the Parson may sue the Executors of his Predecessor in the Spiritual F Court for the Dilapidations, and for that Sum of Money which is found by the Inquest charged by the Bishop or Ordinary, that the Dilapidations do amount unto, to pay the same: And if the Executors sue a Prohibition, the Party who sued in the Spiritual Court shall have a Consultation directed to the same, *&c.* to proceed; and another Consultation directed to him to sue as before.

And if a Man doth detain his Tithes for his Sheep, which are in the Pa- G rish, and there feeding for Half a Year, if he die, the Parson may sue his Executors for these Tithes in the Spiritual Court, and shall have a Consultation, if the Executors sue a Prohibition. And the Parson by Prescription
Prescription. may claim the Tithe of Calves and Kine, and Milk of Cattel feeding in the Parish from the Feast of the Holy Trinity unto the Feast of Saint *Peter*, which is said *ad Vincula*; And the Tithes of Wool forth coming of the Sheep of his Parishioners, killed and dying from the Feast of Saint Michael to the Feast of the Passover, every Year; and the Tithes of Honey and Wax forth coming of the Bees and Bee-hives within the Limits of his Parish; and may sue for them in the Spiritual Court, and shall have a Consultation, if he be disturbed by Prohibition.

And a Man may sue in the Spiritual Court for a Legacy: Where a Man II deviseth *Fabricæ Ecclesie* twenty Shillings, *&c.* the Parson may sue the Executors for the same in the Spiritual Court, *&c.* and may sue the Executors in the

the Spiritual Court for the Tithes of Mills due by the Testator in his Lifetime. And so a Vicar may sue in the Spiritual Court for the Tithe of Beans and Oats, arising within certain Limits within his Parish. And so he may sue for Tithes of Pannage forth coming of his Wood, and for Foals forth coming of his Stud or Breed of Horses, and for Butter, Cheese, and Meats made of Milk in Winter-time. But it seemeth the same ought to be by Prescription. And it was agreed before the King's Council in the Parliament holden at Salisbury, That Consultations ought to be for Tithes of Wood used to be cut, notwithstanding such Tithes are not yearly renewed.

- I (a) A Man may sue in the Spiritual Court, where another Man doth de- 27 H. 8. 13.
fame him as a Falsifier, an Adulterer, or an Usurer, &c. See Post. 53. F.
- K And a Parson, or other Priest, may sue in the Spiritual Court for laying 12 H. 7. 23.
violent Hands upon him, &c. to have him (b) Excommunge, or to have cor- per Constable.
poral Punishment, but not to have Amends there. 11 H. 4. 88.
- L Where a Prior sueth a Parson in the Spiritual Court for two Portions of 7 H. 4. 1.
Tithes forth coming of the Demesnes of F. whereof the Parson hath spoiled [52.]
the said Prior, for which the Parson purchaseth an *Indicavit* in the Chancery, furnishing that the Tithes do amount unto the fourth Part of the Value of his Church, and that the King is Patron thereof, by reason of the Wardship of an Infant in the King's Hands, by reason whereof the Prior cometh into the Chancery, and sheweth there that the Tithes do not amount unto the fourth Part of the Value of the Church, and hath a Writ directed unto the Bishop to certify the King into the Chancery the Value of the Church which the Parson holdeth, and the Value of the Tithes demanded by the Prior: If the Bishop by his Letters certify for the Prior, then the Prior shall have a Consultation. And so it seemeth by this Writ, that where an *Indicavit* is sued, &c. the King shall be certified by the Bishop's Letters upon a Writ directed to the Bishop what is the Value of the Church, and also what is the Value of the Tithes demanded in the Spiritual Court, before a Consultation shall be granted: And it seems to be a good Rule, and a good Order, so as no Party shall be deceived: And this Certificate of the Bishop shall bind the Party to say or aver any Thing against it. But a Consultation shall be granted upon the Certificate returned, &c. but notwithstanding that, if it be unto the fourth Part of the Value of the Church, the Party may sue a Writ of Right of Tithes, &c. 11 H. 4. 48.
So if the Bishop certify that J. S. is utlage, or in Prison at the Estoppel 211.

Time of the Utlagary, 15 Ed. 3. Utlagary 2. Brev. Estoppel 211.

(a) Note; The Offence in this Case ought to be merely Spiritual. 22 Ed. 4. 10. 2 Ed. 4. 10.

(b) See accordant 7 H. 4. 1. *Si non de Violata pace nostra, sed de Excommunicatione nostra ad correctionem animæ tantummodo agatur. Register 49. b.* See 11 H. 4. 88. a. per Thirning.

Where the Defendant in Attachment on a Prohibition pleads that he was a Clerk, and had Tonsure, and that the Plaintiff beat him, and that he the Defendant sued in Court Christian, only to inform the Court, that the Plaintiff had offended against Holy Church, without suing in any other Manner.

If a Bishop make an Order, That the Parson of such a Church shall yearly A pay unto the Abbot of B. and his Successors two Parts of the Profits of the Church in the Name of a yearly Pension, and that the Parson, before he have Possession of the Church, take an Oath so to do, for which the Parson sueth in the Court of *Rome*, and obtaineth a Delegacy directed unto the Bishop and his Officers, to repeal the Order, &c. Now if the Abbot sueth a Prohibition upon this Matter, the Parson shall have a Consultation.

If a Lay-man will not make his Offerings at Days limited to the Parishioners to offer, or will not confess himself unto his Curate, or receive the Sacrament of our Lord Jesus Christ of his Curate, by reason whereof the Curate citeth and sueth him in the Spiritual Court for the same: If he purchase a Prohibition, &c. upon shewing the Matter a Consultation shall be granted.

See for their Capacity at the Common Law,

11 H. 4. 12.
7 H. 6. 30.
12 H. 27.
3 Ed. 4. 6.
12 H. 7. 22.

If the Churchwardens of any Church have used Time out of Mind to receive yearly of one of the Tenements of the Parish a Pound of Wax to maintain the Taper before the Crucifix in the Church, and he who is now Tenant of the Tenement refuseth to pay this Wax, &c. there the Churchwardens may sue in the Spiritual Court for the same: And if he obtain a Prohibition, Consultation shall be granted.

If a Man be condemned in the Spiritual Court in a Cause of Defamation, D for which he appealeth unto the Court of *Canterbury*, &c. and there the Sentence is confirmed, and the Party condemned in twenty Shillings for Costs, and the Cause remitted unto the Judges before whom it was first commenced, by reason whereof he who is condemned sueth a Prohibition; the other Party shall have a Consultation. If a Parson doth detain from the Parishioners E the Goods of the Church, and in his Will he enjoineh his Executors to deliver them unto the Parishioners; the Parishioners may sue the Executors in the Spiritual Court for them; and if they sue a Prohibition, the Parishioners shall have a Consultation; and this Consultation may be sued by any of the Parishioners who will sue in the Spiritual Court. If the Bishop or his Official F cite any Man for laying violent Hands upon any Clerk, &c. if he sue a Prohibition, the other may have a Consultation; *Provided the Spiritual Court act only touching corporal and not pecuniary Punishment, &c.*

Sec 51. K.

If a Man in time of the Vacancy of a Parsonage or Vicarage will not pay G his Tithes, and the Ordinary *ex Officio* cite him to pay them, &c. if he purchase a Prohibition, the other shall have a Consultation granted unto him.

If an Abbot and Convent are bounden, by reason of any Ordinance law- H fully made, to find four Chaplains to sing in such a Church or Chapel for the Souls of such or such, and if they fail to find them, they bind themselves in divers Pains and Censures; and if they fail in all or in Part to find these Chaplains, they have granted that the Dean of *Salisbury*, or his Official, shall interdict their Church, and so hold it until they have satisfied, &c. for which the Dean or his Official, *ex Officio*, cite the Abbot and Convent to find the said Chaplains, &c. if they sue a Prohibition, the Dean or Official shall have a Consultation in that Case.

- I If the Ordinaries do forbid the Friars, that they shall not hear Confessions, nor they shall not admit any one to be buried in their Church, and sue them in the Spiritual Court for that Cause; if the Friars purchase a Prohibition, the Ordinaries shall have a Consultation.
- K If a Man sueth in the Spiritual Court for taking and detaining from him his Wife lawfully married unto him, if the other sue a Prohibition for the same, he shall have a Consultation, forasmuch as for Restitution of his Wife only he sued, &c. And yet he may have an Action at the Common Law, *de Uxore abducta cum bonis Viri*, or an Action of Trespafs for taking the Wife, as it seemeth. Sec 51. I.
- L And a Parson shall sue for a Pension of forty Shillings in the Spiritual Court, whereof the House hath been seised Time out of Mind, and shall have a Consultation thereupon, if a Prohibition be sued, &c.
- M If a Man recover in the Spiritual Court in a Cause of Defamation, Cofts, he shall sue there for the Cofts; and if the other sue a Prohibition, he shall have a Consultation.
- A And if a Man have corporal Punishment in the Spiritual Court for a Cause of Defamation, or for laying of violent Hands upon a Clerk, &c. if the Party will redeem his Penance, and promise to pay unto the Party a certain Sum for his Damages, &c. if after he will not pay the Money unto the Party, the Party damnified may sue for the same in the Spiritual Court; and if the other Party purchase a Prohibition, he shall have a Consultation. [153.]
12 H. 7. 22.
- B If a Parson for an Offence have Judgment to be deprived in the Spiritual Court, and the Patron doth present another Parson unto the Ordinary, who sueth the first Parson in the Spiritual Court, because he will not void the Church, but defend himself by Appeals, or other Matters, &c. now if the first Parson purchase a Prohibition, the other may sue a Consultation; or without any Prohibition sued by the first Parson, the Parson may sue a Writ in the Chancery unto the Spiritual Judge, to proceed in the Spiritual Court upon the Cause of Deprivation and Difability.
- C Upon a Legacy given to any Order of Friars, they may sue the Executors in the Spiritual Court for the same. And if the Executors purchase a Prohibition, they may have a Consultation upon the Matter shewed, &c.
- D If Friars, or other Persons whatsoever, sue in the Spiritual Court for a Legacy, and have Process against others as Witnesses in that Cause; if the Witnesses will sue a Prohibition, furnishing that they are sued against their Wills *ex Officio Judicis*, in the Spiritual Court, &c. yet he or they to whom the Devise is made shall have, upon the Matter shewed, a Consultation.

And note, That the Justices of the King's Bench may grant a Consultation of Tithes as well as the Chancellor.

And when the Justices grant a Consultation of Tithes of Spoliation, they make the Libel indorsed in such Manner:

Consultation.

The Lord the King hath not Cognizance touching Spoliation of Tithes, in the Ecclesiastical Court, forasmuch as it may not be litigated there touching the Right of Patronage or the Advowson of Tithes. And so they give no Power by the Indorsement; and the Rule in the Register is by those Words.

Nota, that the Justices said, That Tithes shall not be but of such Things **E** which increase from Year to Year, and that by the Manure of Man: But that is against the Decretals.

And all the Justices are against a Consultation in a Cause of Defamation, **F** because, it seems, he may have his Action at Common Law for the same Defamation.

Also of Coals, or of Quarries, or the like, a Man shall not pay Tithes, **G** nor of † Agitment, because that he payeth Tithes for the Cattle which feed in the Pastures.

And also they say, That properly a Consultation ought not to be granted, **H** but in Case where a Man cannot recover at the Common Law in the King's Courts.

And if the Bishop cite a Man *ex Officio* for to appear before his Officers **I** for Fornication, &c. or such like Offences, and the Party defendeth himself for Appeals, or such other Delays, and by suing a Prohibition unto the Spiritual Court, and afterwards he waves the Delays, and submits himself to the Judgment of the Spiritual Court, and they delay to proceed in these Causes for the Vexation and Delays, and the Suing of the Prohibition which the Party had before; then the Party shall have a Writ directed unto the Spiritual Judges, that they do proceed *in Case of Defamation to impose canonical Punishment, and in Case of Submission, &c.* Provided that whatever may any way tend to the Derogation of our Royal Right, be in no wise attempted by you.

If the very Patron present an able Person to the Ordinary, and the Ordinary refuseth him, and afterwards a Disturber presenteth unto the Ordinary another Person unto the same Church, and the Ordinary doth admit, institute and induct him, and afterwards the very Patron recovereth his Presentment against the Disturber; for which Cause the Presentee of the very Patron sueth the Presentee of the Disturber in the Spiritual Court, to avoid and remove him; for which Cause he sueth a Prohibition, &c. now the Presentee of the very Patron shall have a Consultation unto the Spiritual Court to proceed in that Case, &c. But first the Record in the Common Pleas ought to be certified into the Chancery of the Recovery, or of the Composition there made of the Title of the Presentment, before the Consultation shall be granted.

If the Tenants or Possessors of any Lands or Tenements within any Parish **L** have used to find a Chaplain to say Divine Service in the Parish Church, &c. Time out of Mind, &c. and afterwards they withdraw, and will not find such Chaplain, &c. then the Parson and Parishioners shall sue against them in the Spiritual Court, for to find such Chaplain in the Church: And if the Tenants or Possessors of the Land sue a Prohibition, upon the Matter shewed in Chancery, the Parson and Parishioners shall have a Consultation to proceed, and by such Words; *We signify to you, that you may lawfully proceed in that Cause*

See 51. L.

52. M.

27 H. 8. 13.

ac. Br. Consultation 7.

See 1 Cro. 446.

Register 55.

Br. Dismes 18.

† Agitment;

this must mean

of profitable

Cattle. Sir Si-

mon Degg

247.

Cause as to the reducing the Chantry aforesaid to its original State, &c. and that you may act as to the imposing a due Punishment, by reason of such Substraction from the said Chaplain thereof, and may further do that which you shall know to belong to Ecclesiastical Jurisdiction; our said Prohibition, or any other to be directed to you hereafter in the Cause aforesaid, notwithstanding, &c.

And if it be after Time of Memory, viz. in the Time of R. 1. and before the Statute of *Mortmain*, the Parson and Parishioners shall have such Suit for a Chantry, &c. And if a Parson and Parishioners sue one such Tenant and Possessor of the Lands to find such Chaplain, &c. and he sue an Inhibition from the Court of *Canterbury*, or appeal unto the Court of *Canterbury*, or make such subtil Delays in the Court of *Canterbury*; then the Parson and Parishioners shall have a special Writ unto the Archbishop and his Officers: *That you may proceed and act in the Cause and Process devolved before you in the Court of Canterbury, by virtue of the Appeal aforesaid, so far as relates to the reducing the Chantry to its due State, the imposing and causing to be imposed due Punishment, by occasion of such Substraction from the same, and may cause the said Sentence pronounced against him, if rightly deduced, to remain in its full Strength, and further do, &c. our said Prohibition notwithstanding.*

[54.]

A If a Man devise an Ox or a Cow unto the Church for Reparation thereof, or for the Churchyard, and he who hath the Cow or the Ox will not deliver the same unto the Churchwardens; then the Ordinary *ex Officio*, or the Churchwardens may cite him, and sue him for the detaining of the Cow or Ox: And if the other Party sue a Prohibition, the Churchwardens shall have a special Consultation: *We signify to you, that in the Cause aforesaid as to the Restitution of the Legacy aforesaid to the said Churchwardens in Form aforesaid, and as to imposing on him canonical Punishment for detaining thereof, it may be litigated before you, and you may lawfully proceed and further do that which to the Ecclesiastical Court, &c. our Prohibition notwithstanding.* And if he will not proceed upon that, they may sue an Attachment, &c.

B And in many Cafes a Man shall have a special Consultation. As, if a Parson sue in the Spiritual Court for Tithes of great Trees which pass the Age of twenty Years, and makes his Libel by the Name of *Silva cædua*; now the Party may shew in the King's Bench or in the Chancery, that the Trees were great Trees above the Age of twenty Years; and upon this Surmise he shall have a special Consultation to proceed, *so that it be touching Silva cædua*, and not of other Trees which are past twenty Years Growth, or the Age of twenty Years. And see the Statute for the same, *Anno 45 Ed. 3. cap. 31.*

C If a Man have a Chapel within his Manor which is a donative Chantry, or presentable, and the Chaplain hath used to have the Tithes arising of the Demesnes of the Manor Time out of Mind, &c. Now if a Parson (in whose Parish this Chapel is) sueth the Lord of the Manor, and also the Chaplain in the Spiritual Court, for the Tithes of the same Manor, they shall have a Prohibition, &c. because the Advowson of this Chapel may come unto the King by Wardship or Escheat, &c. And then the Parson within whose Parish this Manor and Chapel is, shall have a special Writ of *Scire facias* against the Lord of the said Manor, and also against the Chaplain, returnable in the

Breve de Vi Laica removenda.

See Plow 472. In Molin's Case. Plow. commends this Form of Scire facias; but there is another Form used at this Lay.

Chancery at a certain Day, if they can say any Thing wherefore a Consultation shall not be granted, and the Writ of Prohibition revoked and repealed; and further to do as the Court shall award in that Case. And in the End of the Writ shall be, *And have you there the Names of those by whom you shall give him Notice, &c. and this Writ, &c.* Which Writ appeareth in the Register in the End of the Writs of *Significavit*.

Breve de Vi Laica removenda.

Old Na. Br. 33. cont. and Marrow in his Reading.

THIS Writ *de Vi Laica removenda* lieth as well upon a Surmise made by the Incumbent, or by him that is (a) grieved, &c. without any Certificate thereof made in the Chancery by the Bishop, as upon a Certificate thereof made in the Chancery by the Bishop.

And when the Bishop makes Certificate into the Chancery of the Force, E then the Form of the Writ is such:

The King to the Sheriff of Lincolnshire, greeting: At the Request of the worshipful Father the Bishop of Lincoln we command you, that all Lay Force which holds itself in the Church of I. of his Diocese, to the disturbing the said Bishop, whereby he is less able to exercise his spiritual Office in that Church, you without Delay do remove from the same, &c. And he shall have an Alias and a Pluries, and an Attachment against the Sheriff, directed unto the Coroners, if he do not serve or return the Writs.

And if the King do collate unto any Prebend of any Bishop come to him F by Title, and the Bishop make Resistance, that the King's Presentee cannot have the corporal Possession thereof; then the Writ shall be directed unto the Sheriff, and shall be such:

We command you, that all Lay or Armed Force which holds itself in the said Church, or in the Houses thereto adjoining, to the disturbing our Peace in your County, you do without Delay remove from the same, and if you shall find any Persons resisting in this Matter, that you attach them by their Bodies, and keep them in safe Custody in our Prison, so that you may have them before us on the Octave of Saint Hilary, &c. wheresoever, &c. to answer us touching the Contempt and Resistance above-mentioned: And have there the Names of those whom you shall have attached, and this Writ. And this Writ *de Vi Laica removenda* G may be made returnable, or not returnable, at his Pleasure who will sue the Writ; and it may be returned into the Common Pleas as well as into the King's Bench.

(a) If one has a Writ to the Bishop, and a Disturbance of its Execution is made by the Incumbent, or any other, the Justices of C. B. may grant Remedy. But not if the Disturbance be

after the Execution of the Judgment. 12 H. 4. 26. Not upon a Suggestion. But upon a Suggestion of the Party grieved in the Chancery, he shall have this Writ.

And

H And note, That by this Writ the Sheriff ought not to remove the (a) Incumbent who is in Possession of the Church, whether the Possession be of Right or Wrong, but only for to remove the Force, and to suffer the Incumbent for to enjoy the Possession: And if the Sheriff do amove, or would put out the Incumbent who is in Possession, the Incumbent shall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath put him out, that without Delay he make him amends: And if he do not so do, the Party may have an *Alias* and *Pluries*, and *Attachment* against the Sheriff. And the Form of the Writ *de Vi Laica removenda*, without the Certificate, is such:

A *The King to the Sheriff, greeting: We command you that all Lay Force, as also armed Power, which holds itself in the Prebend of E. in the Church of C. to the disturbing our Peace, you do without Delay remove from the same: And if you shall find any Persons resisting you in this Matter, then having taken with you a sufficient Power of your County, if it shall be necessary, attach them by their Bodies, &c. (as above).*

B And the Form of the Certificate of the Bishop is such:

To the most excellent Prince and his Lord, the Lord Henry by the Grace of God, &c. W. by divine Permission Archbishop of York, Primate of England, sendeth greeting in Him by whom Kings do reign and all Things subsist: We make known to your Royal Highness by these Presents, that certain Persons unmindful of their Safety do hinder and disturb the Possession of Master I. in the Church of C. of our Diocese, canonically conferred upon him, which A. some time kept occupied to the Prejudice of our Office and of Ecclesiastical Liberty, and of the Right of the aforesaid I. Therefore we humbly beseech your Excellency with your wonted Grace to stretch forth the Arm of your Royal Authority, to the End that this Force and Power may be absolutely removed, that the Rebellion of the Enemies of Christ being thus suppressed by your Aid, Ecclesiastical Liberty may remain safe and unhurt under the Shield of your Defence, and you may therefore obtain from God a worthy Recompence, who, may He long preserve you to his Church and People! Dated at B. the fourth of the Calends, &c.

Writ of Waste.

C THE Form of the Writ of Waste against Tenant in Dower doth vary from the Form against other Tenants; for the Writ of Waste against Tenant in Dower is such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon by good Summoners B. (b) who was the Wife of C. that she be before our Justices at Westminster in fifteen Days of the Holy Trinity, to shew wherefore she hath committed Waste, Sale, Destruction (c) and Banishment of the Lands, Houses, Woods,

(a) And if he remove him, the Court of King's Bench shall award his Restitution, altho' it appears the Incumbent had no Title. *M. 43* & 44 *Eliz Ajot ver Batchellor.*

(b) Where the Writ shall be against her by

her proper Name, see 32 *Ed. 3. Brief 265.* 31 *Ed. 3. Brief 326.*

(c) *Quare fecit vastum & destructionem in Terris & Hominibus*, adjudged good, without saying *Exilium*. 2 *H. 6. 11.*

Gardens, and Men, which she holds in Dower of the Inheritance of the aforesaid A. in N. to the Disberison, &c. And in that Writ he doth not rehearse the Statute which gave the Writ of Waste, (a) nor the Writ of Waste against the Guardian, because they were punishable at the Common Law, before the Statute, by Prohibition and Attachment thereupon, if they did Waste. And *Exilium in hominibus* shall not be put in the Writ of Waste, if the Tenant in Dower, or other Tenant, do not misuse the Villains of the Manor, by reason whereof they depart from the Manor, or from their Tenures; and if they do, then it is Waste. And in a Writ of Waste against Tenant for Life or Years, he shall recite the Statute in such Form:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, &c. B. &c. Wherefore, seeing that it is provided by the Common Council of our Realm of England, that it shall not be lawful for any Person to commit Waste, Sale or Destruction of Lands, Houses, Woods or Gardens; the same B. hath committed Waste, &c. of the Lands, Houses and Gardens in L. which (b) the aforesaid A. demised to him, &c.

29 Ed. 3. 15.
Et 3 Ma.
Dyer 129.

And if an Abbot bring a Writ of Waste against Tenant in Dower, the D Writ shall be, *To shew wherefore he hath committed Waste of the Lands, &c. which he holds in Dowry of the Right of his Church, to the Disberison of his (c)*

(a) *Of Pleadings and Process in Waste.*] The Defendant pleads a Plea in Bar, which does not acknowledge the Waste, as a Grant to hold without Impeachment of Waste, &c. if there be a Demurrer thereto, and it is ruled against him, yet the Sheriff ought to enquire of the Waste and Damages; *per Thorpe*: And therefore he may after the Demurrer traverse the Point of the Writ, and plead no Waste done. 38 Ed. 3. 24. a. b. The Plaintiff in Maintenance of his Writ, tenders an Averment, that the Tenant refuses, this is peremptory against the Tenant. 6 H. 4. 5. a. b. In Waste against two, one makes Default, and the other appears, who thereupon is put to answer. 4 Ed. 3. 33. 39 Ed. 3. 19. 12 H. 4. 5. b. *Quare*, If a Writ of Inquiry shall be awarded? If *Nilil* be returned on the Summons, Attachment and Distress, and the Tenant makes Default, the Waste shall be inquired. 12 H. 4. 4. 21 H. 6. 56. Where the Writ of Inquiry is of a Waste in two Villis, the Jurors ought to view both the one and the other; but it is sufficient, though the Inquiry be taken at any other Place. 12 H. 4. 9. b. In Waste against two, one makes Default at the grand Distress, the other appears; a Writ of Inquiry shall not be granted, for one cannot answer without the other. 14 H. 4. 37. See the contrary to this, *supra*.

Note; In Waste in the *Tenet*, the Summons shall be in *Terra petita*, although in Truth another Person is Tenant; as if one does Waste, and afterwards grants over his Estate, and upon the Distress Issues shall be returned on this

Writ. But if it be in the *Tenuit*, although the Sheriff on every Writ returns *Nilil*, yet a Writ to inquire of the Waste shall issue. 11 H. 6. 4. a. 12 H. 4. 4. a. and 21 H. 6. 56.

In Waste by *Darrel* against *Leyburn*, Judgment was on a *Nilil dicit*. Now if the Plaintiff will release the Damages, he shall have Judgment for the Place wasted. *Quare*; For a Writ shall issue to inquire of the Damages, but not of the Waste, for that is acknowledged. And by the same Case, the Sheriff need not find Deer on the Place wasted. *Dyer* 204.

Note; In Waste in *Domibus*, *Boscis*, &c. the Plaintiff may abridge the Waste assigned, so that he do not falsify his Writ; and therefore he cannot abridge the whole Waste supposed in *Domibus*. *Dyer* 272. b.

On a Writ of Inquiry of Waste on Judgment by Default, the Jury may find no Waste done. 19 Ed. 3. *Waste* 30. 3 H. 6. 296 *per Martyn*.

(b) *Note*; If A. and B. Jointenants, or Parceners, make a Lease for Life or Years, and A. dies without Issue, B. may have Waste against the Lessee, supposing that he himself had leased the Estate. 46 Ed. 3. 17. a. 35 H. 6. 39. a. *per Prisor*. But if Waste be brought, supposing that A. and B. Lease to the Defendant for Life, Remainder to the Plaintiff: It seems a good Plea, that A. leased it sole, *absque hoc*, that A. and B. leased it. 6 H. 4. 5.

(c) *Ad Exbaredationem Episcopi vel Ecclesie*. 2 Mar. *Dyer* 129.

Church, &c. And shall not say, *Of the Inheritance of him the Abbot*, nor to *the Disberison of him the Abbot*, &c. But if the Heir bring a Writ of Waste against the Tenant for Life of his Ancestors, then the Writ shall suppose that the Tenant holdeth *of the Inheritance*, &c. and that the Waste is done *to his Disberison*, &c. and that they have made Waste of Lands they hold in Dower of the Wife, yet the Husband doth not hold in Dower.

E (a) And the Writ of Waste shall be always brought against the Tenant in Dower or Tenant by the Curtesy, although they have granted over their Estates unto others.

F If the Husband make a Feoffment of his Land, or a Stranger doth abate after the Death of the Husband, or disseiseth the Husband in his Life-time, and afterwards the Wife recovereth her Dower against the Stranger, &c. if he bring a Writ of Waste against the Wife, the Writ shall make mention of the Recovery, &c. how she recovered the Land against him.

G If a Feme hold in Dower of the King who hath the Reversion, and the King granteth the Reversion in Fee unto a Stranger, and afterwards the Feme committeth Waste; now the Grantee shall have a Writ of Waste, and the Writ shall make mention how she holdeth of the King, and how he hath granted the Reversion unto a Stranger, &c. and that she who held in Dower of the Stranger of the King's Grant hath committed Waste, &c. So if the Husband dieth, and the Heir maketh a Feoffment unto a Stranger in Fee, who assigneth Dower unto the Wife, and she commits Waste; the Writ shall make mention that she held in Dower of the Gift of her Husband by the (b) Assignment of a Stranger, of whom the aforefaid Feme held in Dower of the Assignment which the Heir of the Husband hath made to the said Stranger, *to the Disberison* of him who bringeth the Writ. The Form of the Writ of Waste, where the Wife is endowed *ex Assensu Patris*, is such: 20 H. 6. 28.

3 & 4 Eliz.
Dyer 206,
208.

(a) Note 30 Ed. 1. 16. Tenant in Dower grants her Estate to the Heir under Age, and a Stranger, rendring Rent on Condition of Re-entry for Non-payment. Waste is made, the Heir disagrees, the Tenant in Dower re-enters for Non-payment, the Heir brings Waste. If the Heir at the Time of, or during the Waste done, took any of the Profits, &c. the Waste is not punishable. But if the Heir never took any of the Profits, Waste lies against the Tenant in Dower after the Disagreement. See 38 Ed. 3. 25, 29.

The Husband levies a Fine, and takes back an Estate for Life, Remainder to his Son in Tail, and dies; the Son endows his Mother, who assigns over her Estate; the Son bring Waste against her, as Tenant in Dower; and adjudged that it lies; but it seems also, that he shall have a general Writ, supposing that she held in Dower

of his Heritage, 26 Ed. 3. 76. and yet he may have a Writ making Mention of the Recovery; but such Writ shall suppose that she held of his Heritage; and it seems good, as well as in Case of a Feoffee, or where the Disseisor of the Husband assigns Dower. 38 Ed. 3. 23. 14 Ed. 3. Brief 273, 282. *vide infra* G.

(b) If A. makes a Lease to B. to commence at a Day to come, and then A. enfeoffs C. and C. enfeoffs D. before the said Day; and afterwards B. enters and does Waste, the Writ shall be *in Terris quas tenet ad Terminum annorum de prefat' D. ex assignatione C. de quo idem B. tenuit ad eundem Terminum ex assignatione A. &c.* although there was no Tenure before the Term commenced. Dyer 206. Darrel ver. Leybourn. And so it is if the Lessor enters on the Lessee and makes Livery, &c. 5 H. 5. 12.

[56.] *The King, &c. If S. &c. then summon, &c. who was the Wife of R. that she be, &c. to shew why she hath committed Waste, &c. which she holds in Dower of the Gift of the aforesaid R. some time her Husband, with the Assent of A. of B. Father of the aforesaid R. of the Assignment of the same A. to the Disberison of the said S. &c. And if the Wife do recover her Dower against the Father, then the Writ of Waste shall make mention of the Recovery thus: And which the same Isabel, in our Court before our Justices of the Bench, by Consideration of the same Court hath recovered as her Dower against the aforesaid A. to the Disberison of him the said S. &c. And the Writ may be of Mills and Vivaries; and then the Writ shall be, To shew wherefore he hath committed Waste in the Lands, Houses, Mills, Woods, Vivaries and Gardens.*

And if a Guardian in Chivalry grant over his Estate, who maketh Waste, **A** the Writ of Waste shall be brought against the Grantee, and not against the Guardian; and it is not like Tenant in Dower or by the Curtesy (a): But if the Guardian do commit Waste, and afterwards granteth over his Estate, then the Heir shall have an Action of Waste against the Guardian, and not against the Grantee. And so if Tenant for Life or Years commit Waste, and granteth over his Estate, the Writ lieth against him who doth the Waste, and not against his Grantee. And the Form of the Writ against the Guardian is such: *The King, &c. If A. shall make, &c. then summon, &c. wherefore he hath committed, &c. which he hath or had in his Wardship, of the Inheritance, &c. to the Disberison, &c.*

40 Ed. 3. 33.
Finchden.
41 Ed. 3. 23.
Candish.
42 Ed. 3. 19.
per Curiam.
24 H. 8. 14.
20. ac.

And against the Executors of the Guardian the Writ is, *Summon, &c. B. B and C. (b) Executors of the Will of, &c. wherefore they have committed Waste, &c. which they have in Wardship after the Death of the aforesaid B. of the Inheritance, &c. to the Disberison, &c.*

20 H. 6. 1. ac. In a Writ of Waste against Tenant by the Curtesy, the Form of the Writ **C** by the Register is to recite the Statute; and yet it seemeth the Writ is good, although that he doth not recite the Statute; and the Form of the Writ is such:

The King, &c. If A. shall make, &c. then summon, &c. Wherefore, seeing it is provided by the Common Council of our Realm of England, that it shall not be lawful for any Persons to commit Waste, Sale or Destruction of the Lands, Houses, Woods or Gardens demised to them for Term of Life or of Years, or of those which they hold by the Curtesy of England, the same B. hath committed Waste of the Houses which he holds by the Curtesy of England of the Inheritance of the aforesaid A. in N. to the Disberison of him the said A. and contrary to the Form of the Provision aforesaid, as it is said: And have, &c.

And if the Heir grant the Reversion of Tenant by the Curtesy unto another **D** in Fee, and the Tenant attorn, &c. then the Form of the Writ is such:

(c) *The King, &c. If the Abbot of B. &c. shall make, &c. then summon B. &c. Wherefore, seeing that (as above) the same B. hath committed Waste, &c. of the*

(a) See accordant 17 Ed. 3. 13. 43 Ed. 3. 15. 43 Ed. 3. 8. 30. 7 Ed. 3. 13. *sed contra* 26 Ed. 3. Waste 10. 27 H. 6. 7, 81.

See the Statute 11 H. 6. Waste 9. *post.* 80. C. 40 Ed. 3. 33. 42 Ed. 3. 23. 44 Ed. 3. 21. 48 Ed. 3. 19. 12 H. 4. 4.

(b) Note 38 Ed. 3. 17. Waste against the Executors of A. where in Truth the Defendants were Executors of B who was the Executor of A. and the Defendants never administered in the Life of B. the Writ shall abate.

(c) See the Writ adjudged good, 32 Ed. 3. Brief 348.

Houses in N. which he holds for his Life of the aforesaid Abbot, which A. of whom the said B. held them by the Curtesy of England, of the Inheritance of him the said A. assigned to the aforesaid Abbot, &c.

E (a) And if the Heir granteth the Reversion unto another Stranger in Fee, and the Tenant by the Curtesy doth attorn, and afterwards granteth over his Estate by the Curtesy to another Stranger, and afterwards that Stranger committeth Waste; now the Grantee of the Reversion shall have his Action of Waste against the Grantee of the Tenant by the Curtesy, for he cannot be Tenant by the Curtesy, if not of the Heir, &c.

F But if the Tenant by the Curtesy grant over his Estate unto a Stranger, and the Grantee commit Waste, the Heir shall have the Action against the Tenant by the Curtesy, and not against the Grantee who committeth the Waste. But if the Heir have obtained or granted the Reversion in Fee, &c. and after the Tenant by the Curtesy attorn, and after grants over his Estate unto a Stranger who committeth Waste; now the Grantee of the Reversion shall not have an Action of Waste against the Tenant by the Curtesy, (b) but against the Grantee of the Tenant by the Curtesy. And if a Feme be Tenant in Dower, and she grant her Estate unto a Stranger, and after the Heir granteth the Reversion in Fee unto another, and the Tenant attorneth, and after the Tenant for Term of Life commits Waste; it seemeth that the Grantee in Reversion shall have an Action of Waste against the Grantee of the Tenant in Dower, as he shall have against the Grantee of the Tenant by the Curtesy. The Form of the Writ of Waste against the Tenant for Life or Years is such:

11 H. 4. 18.
10 H. 4. Attornment 16.
The Attornment of Tenant in Dower is good.

G *The King, &c. If A. shall make, &c. then summon B. &c. Seeing it is provided by the Common Council, &c. in Lands, &c. demised to them for Term of Life or of Years; the same B. hath committed Waste of the Lands, Houses, Woods and Gardens in L. which the aforesaid A. demised to B. for the Life of him the said B. Or thus; Which F. the Father or Mother, or any other Ancestor of the aforesaid A. whose Heir he is, demised to the aforesaid B. for a Term of Years, &c. to the Disherison, &c. and contrary to the Provision aforesaid, as it is said: And have, &c.*

H And by the Statute of Marlebridge, cap. 23. it is ordered, That Farmers, &c. shall not commit Waste in Houses, &c. or Banishment of the Men. By which Statute the Writ of Waste *de Exilio hominum* is warranted, &c.

11 Ed. 3.
West. 113.

I In a Writ of Waste, if the Premises of the Writ recite, *That it shall not be lawful for any Person to commit Waste in Houses, Woods and Gardens*; in the End of the Writ it is said, that the Defendant hath done Waste in Lands, Houses, Woods, Gardens, and Exile of Men; so as there is more in the End of the Writ than is in the Premises, yet the Writ is good: And so if less be in the End of the Writ than is recited in the Premises, yet the Writ is good. As if it be recited, *That whereas it is provided, that it shall not be lawful for any Person to commit Waste, &c. in Lands, Houses, Woods and Gar-*

(a) And the Distress shall be in the Land leased. 12 H. 4. 4. 21 H. 6. 56. b. ult.

(b) But if the Husband's Feoffee endows the Wife, and she assigns over her Estate, Waste lies

for him against the Wife: For the Plaintiff shall not suppose in his Writ, that she held in Dower of him *ex Assignatione*, but only that she held in Dower of his Heritage. 38 Ed. 3. 23. adjudged.

[57.] *dens*; and in the End it is recited, *That the Defendant hath committed Waste, &c. in the Lands only, or in the Woods only, or in the Houses only*; yet the Writ is good.

If an Abbot make a Lease for Life or Years, and dieth, and the Lessee afterwards committeth Waste, the Writ shall be such: *The King, &c. If the Abbot, &c. then summon B. &c. Wherefore, seeing that it is provided by the Common Council of, &c. the same B. hath committed Waste, &c. of the Houses in L. which the aforesaid Abbot, &c. (if the Abbot himself maketh the Lease); and if his Predecessor made the Lease, then thus: Which R. formerly Abbot, &c. the Predecessor of the now Abbot, demised to the aforesaid B. for the Life of him the said B. or for a Term of Years, (if the Case be so) &c. to the Disberison of the Church of him the said Abbot.* And the like shall be for a Prior or Master of an Hospital.

And against the Executors the Writ shall be: *Summon I. and K. Executors of the Will of L. that they be, &c. they the same Executors have committed Waste, &c. of the Lands which the aforesaid A. demised to the aforesaid L. for a Term of Years, &c.*

And if a Man make a Lease to a Feme Sole of Chafes, and she take Husband, and the Lessee dieth, and she and her (a) Husband commit Waste; the Writ for the Heir shall be thus:

The King, &c. If A. shall make, &c. then summon B. and C. his Wife, that, &c. Wherefore, seeing that, &c. they the same B. and C. have committed Waste, &c. of the Vivaries in L. which they hold for the Life of her the said C. of the Demise which F. the Father of the aforesaid A. whose Heir he is, made thereof to the said C. &c.

And another Writ for the Heir: Where Land is leased to Husband and Wife and the Heir, and the Husband dieth, and the Wife committeth Waste, the Writ shall be: *She the same A. hath committed Waste, &c. of the Houses in L. which she holds for her Life of the Demise which W. made thereof to the same A. and the aforesaid B. some time her Husband, and to the Heirs of him the said B. Father of the aforesaid H. whose Heir he is, &c.*

And another Writ: When a Gift is made unto the Husband and Wife, and unto the Heirs of the Body of the Wife, and the Wife dieth, and the Husband committeth Waste, the Heir shall have a Writ of Waste, and the Writ shall be:

He the same A. hath committed Waste of the Houses in B. which he holds for his Life of the Demise which W. made thereof to the aforesaid A. and M. some time his Wife, and to the Heirs of the Body of her the said M. Mother of the aforesaid B. whose Heir he is, issuing, &c. contrary to the Form, &c.

And if a Man leaseth Lands for Term of Life, and hath three or four Sisters, and dieth, and they make Partition of the Lands and of the Reversion,

(a). See 16 Ed. 3. 68. b. And if the Father makes a Lease to the Feme for Life, and dies, and the Son confirms it to her and her Husband for their Lives; yet Waste lies *quod tenet ad terminum* of their Lives, *ex dimissione* of the Son. 6 Ed. 3. 19. See 46 Ed. 3. 25. b. A Feme Lessee for Life takes Husband, Waste shall be in the *Tenet* as here, although they grant over their

Estate after the Waste committed. But if a Feme Lessee *pur autre vie* takes a Husband and commits Waste, and *Cestuy que vie* dies, the Writ shall be *quas le Fem tenuit*. *Quære*, if she makes a Lease for Years; for in such Case after the Feme's Death, Waste does not lie against the Husband in the *Tenuit*. 10 H. 6. 11. *Quære*, if he makes the Lease for Years, *si eadem Lex*.

and the Tenant for Life committeth Waste; that Sister and her Husband who hath the Reversion shall have a Writ of Waste, and the Writ shall be:

The King, &c. If A. of B. and M. his Wife, shall make, &c. then summon, &c. F. Wherefore, seeing that by the Common Council, &c. the same F. hath committed Waste, &c. of the Houses, &c. in L. which he holds for his Life of the Demise of S. of C. of the Purparty of her the said M. allotted to her of the Inheritance which was S.'s her Brother's, one of whose Heirs she is, by Partition thereof made between them the said M. A. and B. the Sisters of the said S. &c. Or thus: The same F. hath committed Waste of the Houses in L. which he holds for his Life of the aforesaid M. of the Demise of A. Father of the aforesaid M. one of whose Heirs she is, of the Purparty of the same M. allotted to her of the Inheritance of the aforesaid A. &c. And if Tenant for Term of Life grant over his Estate unto another, and the Grantee committeth Waste, the Writ shall be:

E *The King, &c. If B. shall make, &c. then summon A. &c. the same A. hath committed Waste, &c. in the Houses in N. which he holds for the Life of I. (a) under a Demise which the same I. to whom B. demised them for the same Term, made thereof to the aforesaid A. &c. And if Tenant for Term of Life grant over his Estate, and the Grantee granteth over his Estate, then the Writ shall be thus:*

The King, &c. If M. of R. Prebendary of the Prebend of F. in the Church of the blessed Peter of York, shall make, &c. then summon R. &c. Wherefore, seeing that, &c. the same R. hath committed Waste, &c. of the Houses in L. which he holds for the Term of the Life of A. who was the Wife of H. of N. of the Demise of M. of O. who held them for the same Term of the Demise of them the said H. and A. to which same A. and to M. of O. her former Husband, W. B. some time Prebendary of the Prebend aforesaid, Predecessor of the aforesaid Prebendary, demised them for the Life of them the said M. of O. and A. to the Disberison of him the said Prebend R. and contrary to the Form of the Provision aforesaid, &c.

F *And by that it appeareth, that if a Prebendary or Parson maketh a Lease for Term of Life, he or his Successor shall have an Action of Waste. If M. ^{10 H. 7. 5.} lease Lands unto I. for Term of Life, and dieth, and L. Son and Heir of the said M. granteth the Reversion unto H. in Fee, and H. granteth this Reversion unto A. in Fee, and afterwards the Tenant for Life committeth Waste; now the Writ of Waste brought by A. shall be such:*

The King, &c. If A. &c. then summon I. &c. Wherefore, &c. the same I. hath committed Waste, &c. of the Houses in L. which he holds for his Life of the aforesaid A. of the Assignment of H. of whom the same I. held them for his Life, of the Assignment which L. Son and Heir of M. who demised them to the aforesaid I. for the same Term, made thereof to the same H. &c.

G *If S. and K. his Wife, seised in Fee, lease the Land unto B. for Term of Life, and afterwards S. dieth, and K. takes H. to Husband, and K. granteth the Reversion unto A. in Fee, and afterwards B. attorneth, and committeth Waste, and A. bringeth Waste, the Writ shall be:*

The King, &c. If A. shall make, &c. then summon, &c. B. that he be, &c. the same B. hath committed Waste, &c. of the Houses in N. which he holds for his Life of the aforesaid A. of the Assignment which H. and K. his Wife, made thereof to

(a) See *ex dimissione Legationis vers. le Assignationem.* 10 H. 6. 8.

the said A. which said K. and S. her former Husband, demised them to the aforesaid B. for the same Term, &c. If N. leaseth Lands for Years unto F. which F. maketh I. his Executor, and dieth, and I. leaseth the Lands unto R. and afterwards N. granteth the Reversion in Fee to P. and P. granteth the Reversion to M. in Fee, and after R. Tenant for Life, committeth Waste; the said M. shall have a Writ of Waste, and the Writ shall be (a):

[58.] *The King to the Sheriff, &c. If M. shall make, &c. then summon, &c. R. that he be, &c. Wherefore, seeing that, &c. the same R. hath committed Waste, &c. in the Houses in L. which he holds for a Term of Years of the Demise of I. Executor of the Will of F. to whom N. demised them for the same Term, the said M. being Assignee of P. of whom the said R. held them for the same Term, under an Assignment which the said N. thereof made to the aforesaid P. &c.*

F. leaseth Lands unto E. and A. his Wife, and unto the Heirs of E. and afterwards E. dieth, and B. his Son and Heir granteth the Reversion unto C. in Fee, and afterwards A. committeth Waste, the Writ shall be (b):

The King, &c. If C. shall make, &c. then summon A. &c. Wherefore, seeing that, &c. the same A. hath committed Waste, &c. in the Houses in B. which he holds for his Life of the aforesaid C. of the Assignment which B. the Son and Heir of E. (to whom and the aforesaid A. some time his Wife, F. demised them, to hold to them the said E. and A. and the Heirs of the same E.) made thereof to the aforesaid C. &c.

(a) Note the Form of the Writ: Distrain A. to answer B. and C. his Wife, wherefore by the Common Council, &c. the same A. hath committed Waste, Sale and Destruction to the Disruption of the said C. of the Lands, Houses, Woods and Gardens in M. which he holds for his Life under a Demise which D. who holds the Tenements aforesaid of the the aforesaid B. and C. made thereof to the aforesaid A. and E. his late Wife, and the Heirs of the Body of the said E. issuing, so that if it happens the said E. shall dye without Heirs of her Body issuing, then the said Tenements shall remain to F. and his Heirs, and which, after the Death of the said E. who died without Heir of her Body, and which, after the Death of the said F. ought to revert to the said B. and C. as their Escheat, because the said F. was a Bastard, and died without Heir of himself, &c.

Exception 1. That there was no Privity between the Plaintiffs and Defendants, so as to lay in *Terris que de iis tenet*; *sed non allocatur per Cur'*: For that by the Escheat of the Remainder the Seigniorship is extinct; and the like of a Tenure determined. And if F. was to bring the Writ of Waste, he shall not suppose a Tenure, for that the Lessee for Life does not hold of him in Remainder, and *a fortiori* not of the Lord who has the same Remainder by Escheat; and yet if he in Reversion brings Waste, he must suppose a Tenure.

Except. 2. For that the Writ is *Et quæ post mortem E. Et F. reverti debeant*, where by the Writ he supposes a lawful Estate for Life in A.

the Defendant, and so it is repugnant; *sed non allocat'*. For here he only conveys to himself a Title to the Reversion, and not *ad Demesne*; and therefore this would be a good Exception in a Formedon, but not here. Also by ——— the Writ is good, although those Words *post mortem* had been omitted, and so it is Surplusage.

Except. 3. For that it was *reverti debeat* to the Husband and Wife, where it should have been to the Wife only; *sed non allocatur*. For it cannot revert to the Wife without reverting to the Husband: So in a *Cessavit* or *Formedon in reverter*.

Except. 4. For that it should have been laid, as escheated from the Wife, and not from the Husband and Wife; *sed non allocatur per Cur'*. 3 H. 6. 1, 2.

Yet note; The Writ ought to be *ad exheredationem* of the Wife, or else it shall abate. 8 H. 6. 9. a. See for this 27 H. 8. 13. *Dyer* 90. 18 Ed. 3. *Fitz. Brief* 835.

(b) See a good Form of this Writ by the Assignee of a Reversion against the Assignee of a Term, *Dyer* 208. *viz.* A. leases to B. for Years and grants the Reversion to C. who grants over to D. and B. grants his Term to E. who commits Waste in the Houses, &c. which he holds for a Term of Years of the Demise of B. to whom A. demised them for the same Term, of the aforesaid L. of the Assignment of C. of whom the same B. held for the same Term, of the Assignment which A. made to him.

B *M.* leaseth Lands for Life unto *C.* and *A.* her Husband, and *A.* dieth, and *C.* taketh to Husband *T.* of *F.* and *T.* and *C.* his Wife lease the Lands unto *P.* of *H.* who leaseth the Lands unto *J.* and afterwards *M.* granteth the Reversion unto *R.* (*a*) (*b*) in Fee, and *J.* committeth Waste, and *R.* bringeth a Writ of Waste; the Writ shall be such:

The King, &c. If R. shall make, &c. then summon J. &c. Wherefore, seeing that, &c. the same J. hath committed Waste, &c. in the Houses or Lands which he holds of the aforesaid R. for the Life of C. the Wife of T. of F. under an Assignment thereof made to the said R. by the said M. of whom P. of H. (who demised them to the aforesaid J. for that Term) held them for the same Term of the Demise of the aforesaid T. and C. to which same C. and A. her late Husband, the aforesaid M. demised them for the Life of them the said A. and C. &c.

(*b*) *R.* leaseth Lands unto *Amice* and *J.* her Husband, for Term of their Lives, the Remainder to *N.* Daughter to *J. D.* for Term of her Life, the Remainder to the right Heirs of *J. D.* and afterwards *T.* (right Heir of *J. D.*) granteth that Remainder unto *B.* of *C.* in Fee, and afterwards *J.* (Husband of *Amice*) dieth, and she committeth Waste; the Writ of Waste shall be such:

C *The King, &c. If B. of C. &c. shall make, &c. then summon, &c. Amice, who was the Wife of, &c. Wherefore seeing that, &c. the same Amice hath committed Waste, &c. in the Woods, &c. which she holds for her Life of the aforesaid B. of C. under an Assignment which T. the Cousin and Heir of J. D. made thereof to the said B. of which T. the same Amice held them for the same Term under a Demise which R. made thereof to the aforesaid A. and J. her late Husband, for the Life of them the said A. and J. so that after the Death of the same A. and J. the aforesaid Woods should further remain to N. the Daughter of J. D. for her whole Life, and after the Death of the said N. the same Woods should remain to the right Heirs of the aforesaid J. D. &c.*

(*b*) And by this Writ it appeareth, that he in the Reversion shall have a Co. Lit. 54. a. Writ of Waste against the Tenant for Life, where there is a mesne Estate in Post. 59. 11. Remainder for Life to another.

D There is another Writ of Waste in this Form:

The King, &c. If J. and C. shall make, &c. then summon, &c. Isabel, &c. Wherefore, &c. the same Isabel hath committed Waste, &c. in all the Lands, &c. which she holds for her Life by a Fine thereof levied in our Court before W. of C. and his Companions our Justices of the Bench, by our Writ between the aforesaid J. and C. and R. of P. and which after the Death of the aforesaid T. and Isabel ought to remain to the aforesaid J. and C. and to the Heirs of the Bodies of the same J. and C. issuing by Form of the Fine aforesaid, &c.

E And if a Man leaseth Lands for Term of Life unto *E.* the Remainder to *M.* for Life, and afterwards granteth the Reversion in Fee to one *B.* Father of *R.* whose Heir the said *B.* is; and afterwards the first Tenant for Life dieth, and the Tenant in Remainder entreteth, and committeth Waste; now the Writ shall be,

The King, &c. If R. shall make, &c. then summon, &c. J. of C. and M. his Wife, &c. Wherefore, seeing that, &c. the same J. and M. have committed Waste,

(*a*) *Contra*, if the Reversion was granted for Life, by *Hill and Parning*. 11 *Ed. Recept* 113. yet Waste was against a Tenant for Years, living him in Remainder for Life. 27 *Ed* 3. 87.

(*b*) See for this 20 *H. 6.* 36. That Waste does not lie in such Case, till after the Death or Surrender of the particular mesne Estate. See *Co. Litt.* 59. a.

Writ of Waste.

&c. in the Lands which they hold of the aforesaid R. for the Life of her the said M. of the Assignment which J. of C. (who demised the Land aforesaid to J. of E. for his whole Life, so that after the Death of him the said J. of E. the same Lands should remain to the before-mentioned M. to hold for her whole Life) thereof made to B. the Father of the aforesaid R. whose Heir he is, &c.

And there are other Forms of Writs in the Register, which are not mentioned here for the Length of them; *ideo quære Librum.*

3 H. 6. 1.
Nota.

And there is another Form of Writ of Waste for the Lord by Escheat, G who hath the Reversion by Escheat, &c.

21 Ed. 3. 3.
& 27. contra.
16 Ed. 3.
West. 100.
contra.

(a) And there is a Writ of Waste in the Register for him in the Reversion H against Tenant by *Elegit*, who hath Lands and Tenements in Execution for Debt or Damages. And so against Tenant by *Elegit*, who hath Lands in Execution by Recognizance of Debt: And also against his Executor who hath Lands in Execution by *Elegit*. And it seemeth to stand with good Reason, that the Action doth lie.

But some say, that he against whom the Execution is sued, shall not have an Action of Waste, because he may have a Writ of *Venire facias ad computandum*, &c. and there the Waste shall be recovered in the Debt; but by the Action of Waste he shall recover treble Damages, and so it seemeth he shall not do by that Writ of *Venire facias ad computandum*.

(b) And also if a Man hath Lands in Execution by *Elegit*, and afterwards he in the Reversion granteth the Reversion unto a Stranger in Fee; that the Grantee shall have an Action of Waste against the Tenant by *Elegit* seems reasonable; because the Waste is to his Disinheritance, and he ought not to satisfy the Debt due by the Grantor.

And see 21 Ed. 3. in Title *Scire facias*, whether Recognizor had a *Scire fa-* I *cias* upon his Surmise that the Recognizee had levied all the Debt by cutting of Trees.

[59.] If a Man have Common of Estovers in the Woods of another, and he who is Tenant and Owner of the Wood cutteth down all the Wood, he who ought to have the Estovers shall not have an Action of Waste, but shall have an (c) Assise of his Estovers: For the Action of Waste doth not lie but upon a Lease made, or against Tenant by the Curtesy, or Tenant in Dower, or Guardian.

Note 12 H.
4. 3. per
Hankford, in
a Writ of
Waste the
Writ doth
not recite the
Statute, which
proves that a

(d) If Guardian in Chivalry commit Waste, the Heir shall have an Action A of Waste as well at full Age as within Age.

And if a Man be in Ward unto the Lord by reason of the Use of Lands, because that certain Persons were seised in Fee of the Lands holden by Knight's

(a) *N. B. ante, 37 H. contra.* So 19 Ed. 3. *Waste* 31. 16 Ed. 3. *Waste* 20. A *Scire facias* was against a Tenant by *Elegit* who had cut Trees, to pay the Residue of the Money, to answer for the Trees cut, and for the Plaintiff to have his Land again. *Cur'*: By the Statute against cutting Trees, this is in Nature of a Trespass, and lies not in Account. Nor is he punishable by this Writ (of Waste) but in an Action on the Case only. 21 Ed. 3. 26.

(b) See *supra*, and Note, he cannot in a *Scire*

facias compel him to answer to the Waste and Cutting of the Trees, and therefore it was waived 21 Ed. 3. 30. b. See *F. N. B.* 104. noted that Waste lies. *Quære.*

(c) See 4 Ed. 4. 2. 11 H. 4. 11. 32 Ed. 3. *Waste* 36.

(d) Note; Waste does not lie against Guardian in Socage, but only Account o. Trespass, according to the Nature of the Waste. Adjudged 16 Ed. 3. *Waste* 100. *Vide infra* E.

Service

Service unto the Use of his Father and his Heirs; now if the Guardian commit Waste, the Heir within Age, or of full Age, shall have the Action of Waste against the Guardian, and yet the Heir hath not the Reversion of the Lands, but the Use only. But that is given by the Statute of 4 H. 7. cap. 17.

And if the Guardian do commit Waste, he shall lose the Wardship; and if the Wardship be not sufficient to answer the Damages for the Waste, then he shall render Damages unto the Value over and above the Loss of the Wardship, by the Statute of Gloucester, cap. 5.

B If the King commit the Wardship of the Heir in Ward unto another, and the Committee doth Waste; then upon a Surmise made thereof in Chancery, the King shall send a Writ unto the Escheator, to go to the Land, and see if Waste be done, and to certify the King thereof in the Chancery.

(a) If Escheators do commit Waste in Lands which they have in their Hands in Custody; the Heir within Age, or of full Age, shall have an Action of Waste, and shall recover treble Damages against them, and they shall suffer Imprisonment two Years at the least at the King's Pleasure. And so if Escheators do commit Waste in other Lands seized into the King's Hands by Inquest of Office. Anno 36 Ed. 3. cap. 13.

(b) And Escheators or other Guardians of Lands, in the Vacation of the Temporalities of Bishopricks or Abbies, shall do no Waste, &c. Anno 14 Ed. 3. pro Clero, cap. 4 & 5.

C And if Tenant for Term of Life, or in Dower, or by the Curtesy, or for Years, grant over their Estate to divers unknown Persons, &c. to defraud him in the Reversion, and afterwards Waste is committed; he in the Reversion shall have an Action of Waste against the first Tenant who took the Profits, &c. Anno 11 H. 6. cap. 5.

D There is another Writ of Waste which lieth betwixt two Tenants in Common of Lands, or a Wood in Fee-simple; and the Form of the Writ is such: 1 Inst. 200. b.
Well. 2. c. 22.

The King, &c. If A. shall make, &c. then summon, &c. B. to shew wherefore, seeing that the same J. and B. hold the Wood of J. in N. in Common, the aforesaid B. hath committed Waste, &c. of the said Wood to the Disberisen of him the said A. &c. And have you there, &c. And this Writ lieth as well of Lands, Piscary, Turbary, and the like, as of Woods, when they are holden in Common. See the Statute of West. 2. Cum duo vel tres, &c. Turbariam, cap. 22.

E (d) The Heir within Age shall have an Action of Waste against the Guardian in Socage. Supra A. B.

The Heir at full Age shall have an Action of Waste against the King's Committee, &c.

F If two have a Reversion unto them, and unto the Heirs of one of them, they shall join in an Action of Waste against Tenant for Life. 22 H. 8. 25.
Newton ac.

G (e) Guardian in Socage shall not punish Waste done by a Stranger. 23 H. 6.
Waste 9.

(a) How this may be presented in B. and answered at the King's Suit, and how the King's Grantee shall answer to the Heir in such Case, see 40 Aff. 22.

(b) See Rot. Parl. 8 Ed. 2. M. 9.

(c) And although they hold but for Life, and

by several Titles, yet Waste *pro indiviso* lies. 21 Ed. 3. 29.

(d) The Heir in this Case shall have Account or Trespass, but not Waste. See 46 Ed. 3. 17. 7 H. 6. 23. 17 Ed. 3. 7. 7 Ed. 3. 54. 2 H. 5. 7.

(e) See 46 Ed. 3. 17. Perk. 113. b. 4 Ed. 3. 16.

(a) Waste

- 46 Ed. 3. 17. (a) Waste shall be brought against Tenant for Life, where there is a mesne H
Estate for Years between the Tenant for Life and him in the Reversion.
- 48 Ed. 3. 16. And it appeareth by the Register, that the Writ of Waste shall be main-
50 Ed. 3. 4. tainable, although the Mesne in the Remainder for Term of Life be between
10 Ed. 4. 9. the Tenant for Life and him in the Reversion.
- Choke contr. (b) Where a Lease is made unto the Husband and Wife for Life or Years, I
42 Ed. 3. 22. there the Wife shall not be punished, after the Death of her Husband, for
Belk. Waste done by the Husband. *M. 3 Ed. 3.*
- 2 H. 4. 3. The Tenant may cut Trees to mend Houses, &c. and to do Reparations. K
Old Nat. But if Houses decay by the Default of the Tenant, (c) to cut Trees to amend
Brev. 36. them is Waste.
- 4 Ed. 3. Where Waste is done by the King's Enemies, or by Tempest, the Tenant L
Waste 22 cont. shall not be punished for the same.
- 7 H. 6. 33. ac. Cutting of dead Wood is not Waste. And if a Man cut Wood to burn, M
40 Aff. 22. where he hath sufficient Head-wood, it is Waste. *2 H. 6. 10.*
- 20 Ed. 3. Also it is not Waste to suffer Lands to lie fresh, and not to manure them,
Waste 32. and to suffer them to grow full of Thorns, &c. (d) Also it is not Waste to
2 H. 6. 11. fell seasonable Wood, which is used to be felled every twenty Years, or within
7 H. 6. 38. that Time.
- 40 Ed. 3. 25. (e) If a Man fell Trees it is Waste; and if he suffer the Germins upon
9 H. 6. 66. the Roots of the Trees to be again newly destroyed, the same is new
22 H. 6. 12. Waste (f).
- 20 H. 6. 1. And if a Man do not repair the Banks, by reason whereof the Land is N
10 H. 7. 2. drowned, the same is Waste.
contra. And if a Man plough Meadow, &c. it is Waste. A Wall or Pale, which
25 H. 3. is (g) covered with Thabe or Timber, may be Waste, if the Tenant suffer
Waste 131. them to be uncovered, by reason whereof, &c. And the digging of Gravel,
20 H. 6. 1. or Stone, or Coals, shall be said Waste (h).
22 H. 6. 24. House-bote, Hay-bote, and Fire-bote, do appertain unto a Termor of com-
16 H. 2. ac. mon Right, and he may (i) take Wood for the same. *H. 21 H. 6.*

A Bishop

(a) See *Bro. Waste* 56 *contra* 48 Ed. 3. 16.
50 Ed. 3. 4. 11 Ed. 3. 3, 9. *Perk.* 8. 7 H. 6.
36. *Nota bene.*

(b) See the contrary, *Kelw.* 113. 19 Ed. 3.
Breve 246. but 11 H. 4. 3. *per Cur'*, 19 H. 6.
5. seem to accord.

(c) *Contra*, if ruinous at the Time of the
Lease made. *Dyer* 36. See 12 H. 8. 1.

(d) See 11 H. 6. 1. Oaks cannot be said sea-
sonable Wood, which are passed the Age of 20
Years, but by a Custom in any Place, where is
Plenty of Wood (Timber) Oaks under 20 Years
may be seasonable Wood. And such Custom may
be alledged in the Wood itself, without saying,
In such a Town or Hundred such a Custom is had,
&c. 4 H. 6. 1. *Raft. Entr.* 69. See 40 Ed. 3.
25. 11 H. 6. 5.

(e) See Waste assigned in permitting of Wood
to be uninclosed, whereby the Cattle eat the
Germins. 11 H. 6. 1. 22 H. 6. 12.

(f) And treble Damages shall be recovered
for both, yet he cannot recover *Locum vastat'*.
22 H. 6. 12.

(g) And it ought to be shewn *so covered* in
the Assignment of the Waste. *Dyer* 108. 22 H.
6. 24.

(h) See 5 Co. 12. a. 2 H. 4. 2. 1 H. 7. 14.
12 H. 8. 1.

(i) *Viz.* Oaks, Elms, Ash, &c. for Repair of
the House, and Under-wood, &c. for Inclosures
and Firing; but *Note*; Oak, Elm, Ash, are not
Under-wood, 21 H. 6. 46. which ought to be
shewn by the Defendant in a Writ or Action of
Waste. *Dyer* 19.

- ⓐ A Bishop, or a Master of an Hospital, or a Parson, shall not punish Waste done in the Time of their Predecessors. But an Abbot or Prior shall. See 57. E.
- P Tenant in Tail, after Possibility of Issue extinct, shall not be punished for Waste.
- A Cutting down Willows in the Sight of the Manor is adjudged Waste. [60.] P. 4. Ed. 3.
- B Lessee for Life, Remainder in Tail, the Remainder in Fee unto the Lessee for Life, if he do commit Waste, he shall be punished by him in the Remainder in Tail; and yet the Lessee for Life hath the Remainder in Fee, but there is a mesne Estate of Inheritance, &c. 50 Ed. 3. 3.
- C (a) If a Man cut Trees of the Value of three Shillings and four Pence, it hath been adjudged Waste. 14 H. 4. 11. 38 Ed. 3. 7. Graunge to the Value of 40s. wasted, and yet no Waste, say they.
- D If a Man maketh a Lease for one Year, or Half a Year, and the Tenant do Waste, the Lessor shall have Waste, and the Writ shall say, *Which he holds for a Term of Years*, and in the Count he shall shew the special Matter. *Quere Litt.* 14.
- E (b) A Termor may cut the Under-wood growing under the great Woods and tall Woods; but if there be not any tall Wood, then he cannot cut the Wood. P. 41 Ed. 3. 25. 42 Ed. 3. 6. 10 H. 7. 2.
- F And a Man may have Action of Waste, and count upon divers Leaves. M. 44 Ed. 3. 17. See 34 H. 8. 12.
- G (c) The Guardian shall not be punished for Waste done by a Stranger, &c. but a Termor shall, &c. 44 Ed. 3. 17.
- H (d) If Tenant in Tail leaseth the Lands for his own Life, he shall have an Action of Waste against the Tenant, if Waste be done.
- I (e) The Grantee by Fine of the Reversion shall not have a Writ of Waste against the Tenant before the Tenant attorn: But if a Reversion escheat unto the Lord, he shall have Waste against the Tenant without Attornment. Lit. 131.
- And so if the King grant the Reversion by Letters Patent, the Grantee shall have Waste without Attornment. 34 H. 6. 51. 6 Ed. 3. 17. Attorn. 13. 12 Ed. 4. 3.
- And so if a Man devise the Reversion unto another in Fee, upon Waste done the Devisee shall have Waste without Attornment.

Sir *W. W.* The Cutting of Oaks of the Age of seven Years is not Waste, by *Brian*, 13 H. 7. 21. But *Newton*, 22 H. 6. 47, said, the Termor cannot cut either Oaks or Ash for Fire-wood.

(a) That many petty Wastes are punishable together, see 14 H. 4. 11. 9 H. 6. 66. *infra* P.

(b) Waste in *topping and lopping twenty Ashes and twenty Elms*, and on a Demurrer adjudged for the Plaintiff. *Dyer* 65. a. But if the Assignment be in *cutting down and selling twenty Oaks*, &c. and the Defendant pleads no Waste

made, the Plaintiff cannot give in Evidence Lopping of Oaks. *Dyer* 92. a.

(c) But if the Lessee himself commits Waste, or commands another to do it, as to cut Trees, &c. the Lessee may plead this in Bar of Waste, but then the Lessee shall be barred of his Action of Trespafs for ever. 5 H. 4. 2. b. 2 H. 7. 14. b.

(d) See 1 *Inss.* 345. *Litt.* 145. *contr. quere* 2 H. 5. 7.

(e) See 34 H. 6. 6. 5 H. 7. 19. *Nat. Brev.* 269.

10 H. 7. 5. (a) And none shall have an Action of Waste, but he who hath an Estate in K Fee-simple or in Fee-tail. But a Parson or Prebendary shall have a Writ of Waste upon their Lease; yet some say, that they have not the Fee-simple in themselves alone.

45 Ed. 3. 9. (b) And if Tenant for Term of Life commit Waste, and afterwards alieneth L Thorp, ac. in Fee, yet the Writ of Waste lieth against him: Otherwise it is if the Waste be done after the Alienation made, as is said: *Tamen quere.* 10 H. 7. 1. 25 Ed. 3. 36, 63.

3 H. 7. 11. and 5 H. 7. 24. If an Abbot committeth Waste in Lands which he hath in Ward, and dieth, M the Successor shall not be charged. But if he be deposed, the Successor shall be charged. *M.* 49 Ed. 3. See 43 Ed. 3. 8.

for the Reason of the Case. 21 H. 6. 3. 22 H. 6. 2. A Writ of Waste shall be maintainable against one upon a Lease made unto N him, until he be promoted unto a Benefice, and the Writ shall suppose, *That he holds for Term of Life.* And so of a Lease made to endure from such a Feast unto (c) such a Feast, the Writ shall suppose, *That he holds for a Term of Years* in that Case, and by the Court the special Matter shall be shewed.

(d) Destruction of Villains by Tillage, adjudged Waste. O

(e) Waste done by a Guardian unto the Value of twenty Pence, was ad- P judged Waste, and the Plaintiff recovered. *H.* 34 Ed. 3.

40 Aff. 22. The Termor is not bound for to repair the Houses which are ruinous at the Q Waste 24. by Time of the Lease made unto him. 49 Ed. 3. 2.

Knevit. A House which was newly built and not covered, was abated by the Guardian, and no Waste. But if a Frame which was once covered in the Life of the Lessor, if the Lessee do erase it after his Death, the Heir shall have Waste. 45 Ed. 3. 3, 20. Ant. 39. D.

R If two Coparceners lease Lands for Life, and Waste is committed, and afterwards one of them dieth; the Aunt and the Niece ought to join in an Action of Waste for the Waste done before; and yet the Niece shall (f) not recover any Damages for the same, but the Place wasted; and it seems they shall hold the same in Coparcenary. *M.* 11 Ed. 3.

If there be two Coparceners, and one hath Issue, and dieth, and her Husband is Tenant by the Curtesy, and committeth Waste, his (g) Son shall not have an Action of Waste against him without naming the other Coparcener: 45 Ed. 3. 3, 20.

(a) See *Fitz. Waste* 5. *Litt.* 145. *Nat. Brew.* 36.

(b) But for Waste done before the Surrender (no) Action (of Waste) lies; *quere.* 21 Ed. 4. 31. 8 H. 5. 8. 14 H. 14. a. 19 H. 6. 66. And the Writ in that Case shall be in the *Tenuit*, 14 H. 6. 14. as some held. But by others it shall be in the *Tenet*, whether he be Tenant for Life or Years; but if the Lessor enters with Tort on the Issue, the Action is suspended for Waste done before the Entry, 8 H. 6. 10. and he shall be summoned on the same Land. 21 H. 6. 57. a.

(c) See 14 H. 8. 11. *Litt.* 14. 7 H. 7. 2. 46 Ed. 3. 31.

(d) So if Villains by reason thereof go out of or leave the Seignior, it is Exile, and punishable in Waste; *contra*, if only manumitted, &c. 2 H. 6. 11. a. 14 H. 4. 11.

(e) See 12 H. 8. 1. 7 H. 6. 38. *supra* C.

(f) See 11 Ed. 2. *Waste* 115. 45 Ed. 3. 3. b. 11 H. 4. 16. b. 48 Ed. 3. 14. b. 35 H. 6. 23. b. *Kelw.* 105. a. *Nat. Brew.* 101. 22 H. 6. 12. 49 Ed. 3. 2.

(g) See 9 H. 6. 11. b. *Dubitatur*, but *Kelw.* fol. 103. a. *Case* 64. that the Issue alone shall have it. 15 H. 7. 14.

But if he bring such (a) Writ, it shall abate. *Quod vide P. 2 H. 6. Title Waste.*

S If there be Tenants in Common *pro indiviso*, and one committeth Waste, the other two ought to join in an Action of Waste against the third. See for that *M. 3 Ed. 2. Waste.*

T If the Guardian commit Waste, and the Heir being within Age, bringeth an Action of Waste, the Guardian thereby shall lose the Wardship, and Damages for so much as is wasted, besides the Value of the Wardship which is lost; but if the Heir (b) at full Age do bring a Writ of Waste against him who was Guardian, and recover, then he shall recover treble Damages against the Guardian, because the same is out of the Statute of *Gloucester*, which saith, That the Guardian shall lose the Wardship; for he cannot lose the Wardship there; and therefore he is not in that Case as Tenant in Dower or by the Curtesy are, who were punishable in Waste by the Common Law. *Quod vide M. 12 H. 4. 3. in the Title of Waste, the Opinion of Thirning.*

(c) Writ of Estrepment.

U THERE are two Manner of Writs of Estrepment: One is when a Man hath a real Action depending, as a *Formedon*, or a *Dum fuit infra etatem*, or a (d) Writ of Right, or (d) such Action wherein the Demandant shall not recover Damages; then he may sue this Writ of Estrepment against the Tenant, inhibiting him that he do not make Waste, nor strip, pendent the Action: And this is properly before Judgment is given for the Demandant.

3 H. 6. 16. Variance from the first Record for the Recital of the Name, Town or the like, shall not abate the Writ, because it is Original, not Judicial.

And another Writ of Estrepment lieth for the Demandant, where he hath Judgment (e) to recover Seisin of Land, and before Execution sued by *Habere*

cial. 3 H. 6. 16. No Age in this Writ, for it is in Nature of Trespass, and no Process of Utlawry, for that it is a Preeyre. 14 H. 7. 10. If the Defendant plead in Arrest of Judgment, or Release be pleaded after Verdict, or if the Justices take Advice of their Judgment, the Party may have Estrepment, by Read, 2 H. 6. 13. 4 Eliz. Dyer 210.

T 2

facias

(a) See 9 H. 6. 11. 50 Ed. 3. 3. ante 39. D.

(b) Note; One shall not recover Cofts on the Statute of *Gloucester*. 30 Ed. 3. 27. b. 2 H. 4. 17. b. 12 H. 4. 4. 5 H. 5. 13. a. 9 H. 6. 66. b. 14 H. 6. 13. a. contr. 5 Ed. 4. 7. a. See *Kelv.* 26. the Stat. 289.

(c) See *Rot. Parliament.* 28 Ed. 3. n. 19. A Petition that this Writ may lie in every Action where the Party is to recover Damages. *Resp. Lex antiqua servira.*

(d) See 14 H. 7. 7. a. b. and *Dyer* 210. b. In a *Quid juris clamat*, pending the Writ, and also between the Judgment and Execution, in *Dyer*, *Cateby's Case*, *Dubitatur* in a Writ of

Dower, where the Husband did not die seized. *Tr. 6 Eliz. Mo. 69.*

(e) See 21 Ed. 3. 51. b. The Demandant had Judgment in a *Scire facias* on a Fine against B. and sues an Estrepment, and found Pledges to pursue as he ought against B. and C. and others, of an Estrepment made between Judgment and Execution; all Demand and had Oyer of the Record, and demand Judgment, seeing they were not Parties to the Record, and C. pleads, that B. was his Tenant for Life, and concludes to the Inquest; whereas he might have pleaded in Bar, that he was not comprised, and was amerced for his feint Plea, &c. Note; The Plaintiff

facias seisinam, he may sue this Writ, that the Tenant do not Waste or Strip: X And this Writ doth recite the Recovery and the Judgment, &c. And also the Demandant may have a Writ of Estreptment directed to the Sheriff, commanding him that he do not suffer the Tenant to do Waste or Strip.

11 H. 7. 7. And some say, that this Writ of Estreptment doth not lie in such Action Y
Nat. Br. 40. where the Demandant shall recover Damages against the Tenant. But it
[61.] seemeth reasonable, that the Demandant have such Writ where he doth recover Damages, as where not: For it may be that the Tenant is not of Ability to satisfy the Demandant for his Damages. And also if the Tenant shall be suffered to let the Houses to fall to Decay, or to pull them down, and to destroy the Parks and Chafes, it should be very inconvenient.

28 H. 6. 8. And in every real Action the Demandant may have a Writ unto the Sheriff, A
qu 22 Ed 3. 2. commanding him that he see that the Statute which ordaineth the Estreptment
Estreptment 9. be observed; and that he do not suffer the Tenant to do such Strip: And by
Estreptment brought against the Defendant, and a Stranger to the Recovery. the like Reason he may have the Writ against the Tenant, where he may receive Damages, &c.

(a) And if the Tenant do make a Feoffment hanging the Plea, the Deman- B
dant may have a Writ of Estreptment against the Tenant and against his Feoffee, &c. And by the same Reason it seemeth, that he may have a Writ of Estreptment against the Tenant and those who are his Servants, naming their Names, &c. (b) although they have nothing in the Tenancy: *Quere tamen. Vide T. 5 Ed. 2. Tit. Estreptment.*

6 H. 4. 2. In an Assise, and in every real Action where the Demandant shall recover C
34 Ed. 3. Damages, he may have a Writ of Estreptment for Strip made after the Judgment, and before Execution: But for Corn cut and carried away after Judgment, and before Execution sued forth by the Demandant, the Demandant shall not have a Writ of Estreptment. *Quere* what Remedy he shall have: It seemeth none; for the Tenant may take the Profits of the Lands before Execution, as I think, for it shall not be said Estreptment, if not that the Tenant do such a Thing, which shall be said Waste if a Termor had done it.

18 H. 8. 5. And when a Man purchaseth his original Writ directed to the Sheriff, then D
Note; A Man cannot have this Writ between the Award of the Writ and the Estreptment 6. the Land. Return; for the Statute giveth it pendent the Writ, and it is not pendent till returned. See 12 R. 2. By Charlton, he shall not recover Damages for Waste before the Judgment against the Tenant of

Plaintiff did not dare to demur, but tendred an Issue, *viz.* comprised, and the others *contra*. 22 Ed. 3. 2.

So Note; The Record may be falsified in this Writ. Note; There shall no Judgment be given in Estreptment, till the special Plea deter-

mined. 3 H. 6. Judgment 4. See Judgment therein for Damages, *Paf.* 19 *Eliz. Rot.* 841. *Bendl.* 220.

(a) See *infra*, H. 22 Ed. 3. 2, 3.

(b) And this was so at Common Law. 22 Ed. 3. 3.

- E** And if a Man sueth a Writ of Right unto the Lord of a Court Baron, there he may sue a Writ out of the Chancery directed to the Sheriff, that he see that Waste be not done, &c. or he may sue a Writ out of the Chancery directed to the Party himself, commanding him that he shall not do Waste, &c. and an Attachment thereupon. And when the Writ is depending in the Common Pleas, then the Demandant shall have the Writ of Estreptment out of the Common Pleas or out of the (a) Chancery, at his Election.
- F** And the Writ may be directed unto the Sheriff and the Party; or he may have several Writs, one to the Sheriff, and the other to the Party. 3 H. 6. 13.
- G** And hanging the Action the Tenant may do Waste, and shall not be punished, because it is before the Prohibition delivered unto him; but only for that Waste done after the (b) Prohibition delivered. 3 H. 6. 16. 12 R. 2. Br. Estreptment 13. they were at Issue, if it were before the Delivery, or after. 33 H. 6. 6. 14 H. 7. 7. 2 H. 6. 13.
- H** (c) And if a Stranger of his own Wrong do Waste after the Prohibition delivered unto the Tenant, and against the Tenant's Will, then the Tenant shall not be punished for that Waste, &c.
- I** In a *Scire facias* to execute a Fine, if the Tenant do commit Waste, the Demandant may sue a Writ of Estreptment, &c. 33 H. 6. 6. 14 H. 7. 7. 2 H. 6. 13.
- K** In an Assise the Tenant did (d) Waste after Verdict, and before Judgment given, and afterwards the Plaintiff had Judgment, and afterwards sued a Writ of Estreptment against the Tenant for the Waste done by him after the Verdict and before Judgment; and it was awarded, that the Writ was well brought. *H. 21 Ed. 3.*
- L** And a Writ of Estreptment against the Tenant for Waste done after the Judgment, and before Execution, was maintainable at the Common Law before the Statute. 33 H. 6. 6. cont. by some.
- M** And if a *Formedon* be brought of a Manor, and after the Estreptment is brought against the Tenant, and afterwards a Tenancy doth escheat unto the Manor, and the Tenant doth commit Waste in that Manor, he shall be punished for the same, and yet it is not demanded by the Writ, but Sureties were demanded by the Writ in the Name of the Manor, and the Land cometh in lieu of the Services, &c. 15 Eliz. Dyer 325, ac. 4 Ed. 3. 32. Br. Estreptment 12.

(a) 2 H. 6. 13. a. 33 H. 6. 86. a. contr. 33 Ed. 3. *Brief* 917.

(b) But the Defendant shall not be imprisoned for a Waste done after, except the Writ was directed to him; adjudged in a Case between the Earl of *Cumberland*, and the Countess Dowager. 16 Jac. 1.

(c) In an Estreptment against an Infant, who is in by Descent, he shall not have his Age by Award, because he is to answer for the Contempt. 2dly. For Waste done after the Prohibition by his Guardian in Socage, without his Command, he shall not be punished, for the Prohibition extends only to Waste done by himself; yet a Tenant for Life shall be charged in a Writ of Waste, for a Waste done by a Stranger. 3 H. 6. 17. See 28 H. 6. 8.

(d) See it adjudged, that he shall have a Writ of Estreptment in such Case, 21 Ed. 3. 51. b. 14 H. 7. 7. a. b. Yet it is held, he may have a Writ to the Sheriff to inquire of the Damages for the Waste done between the Verdict and Judgment, and upon the Inquest, the other shall be put to answer the Damages. 21 Ed. 3. 3. a. 21 Ed. 3. 51. *Note*; The Writ which was prayed was a *Venire facias* to answer to the Estreptment, and it was granted; so that it seems no Prohibition preceded. See 14 H. 7. 7. for a *Scire facias* before a Writ of Estreptment granted, but if the Tenant does Waste after a View, and before Judgment, a *Scire facias* lies on a Surmise thereof, or a Writ of Estreptment. 6 H. 4. 1. b. See the *Register* 77. b. among the Notes.

14 H. 7. 10. If a Man do recover in a Writ of Waste, he shall have a Writ of Estrep- N
Cutler and ment against the Defendant for Waste done after the Judgment, and before
Keble. the Execution. 7 H. 4. 16.

21 Ed. 3. 3. In Attaint in the Common Pleas the Plaintiff shall have the Writ of Estrep- O
Br. Estrep- ment against the Defendant out of the Common Pleas, if he will, or out of
ment 7. the Chancery. 2 H. 6. 13.

Quere, if Ju- If a Man sue a *Juris utrum* against several Tenants, as he may, or a Scire P
tices of Assise *facias* against several Tenants, there he may have an Estreptment against any
may award this Writ. of the Tenants, and not against them all. And so it seemeth if a *Formedon*
34 Ed. 3. be brought against two Tenants jointly, the Demandant may have an Estrep-
Estreptment 14. ment against one Tenant only.

5 Ed. 2. Joint-tenancy at the Original is a good Plea; otherwile to say, that he was Joint-tenant at the
Estreptment 11. Time of the Judgment given.

And in a *Juris utrum* sued in *London*, a Man shall have a Writ of Estrep- Q
ment directed to the Sheriff of *London*, as appeareth by the Register.

Writ de Partitione facienda.

THE Writ de *Partitione facienda* is such (a):

The King, &c. If A. shall make you secure, &c. summon B. &c. to shew R
wherefore, seeing that the said A. and B. hold together and undivided three Acres of
Land with the Appurtenances in I. of the Inheritance which was M.'s, the Mo-
ther of the aforesaid A. and B. whose Heirs they are, she the same B. opposes
making Partition thereof between them according to the Law and Custom of our
Kingdom of England, and does not permit it to be made, unjustly, as it is said,
and have you there the Summoners and this Writ. Witnesses, &c.

9 H. 5. 15. And if the Husband hath one Part of the Land by Purchase, and the S
Quere, if other Parcel in the Right of his Wife, and another Coparcener hath another
Parceners of Part as one of the Heirs of the common Ancestor; then the Husband and
Lands in Tail the Wife shall have a Writ of Partition against the third Coparcener, and the
shall have a Writ of Parti- Writ shall be such:

[62.] *The King to the Sheriff, &c. If I. and Mary his Wife shall make, &c. sum-*
mon Margaret, &c. to shew wherefore, seeing that the said I. as in Right of her
the said Mary, of her Purparty happening to her of the Manor of T. which was
A.'s, the Father of the aforesaid Mary, one of whose Heirs she is, and the same
I. by virtue of a Feoffment made to him by F. another Daughter and Heir of the
aforesaid A. of the Purparty of her the said F. happening to her of the same
Manor, and the aforesaid Margaret, the Daughter and third Heir of him the
same A. hold together and undivided the Manor aforesaid with the Appurtenances,
she the same Margaret opposes making Partition, &c.

(a) If he counts of an Estate-tail in the Ance- not in Demand, but only the Possession affirmed
stor, it is sufficient without shewing the Com- (or ascertained). *Dyer 79. b.*
mencement thereof, for in this Writ the Land is

And

- A And there is a Rule in the Register such, that is to say, that *Anno* 12. at *York*, was sealed a Writ de *Partitione faciendæ* betwixt Strangers; and there it was said, that a Man should have the same in every Case without *de Hereditate* in the Writ: And it is there said, that that Writ was never seen before. 34 Ed. 3. Partition 14.
- B And if a Man will sue a Writ of Partition for Lands in *London*, then he shall have a Writ unto the Mayor and Sheriffs of *London* in the Nature of an *Audita Querela*, and the Writ shall be such:
The King to the Mayor and Sheriffs of London, greeting: It is shewed unto us, on the Behalf of S. of H. and I. his Wife, that whereas they R. and S. hold, together and undivided, one Messuage with the Appurtenances in London, the same R. and S. oppose making Partition thereof according to the Law and Custom of the same City, and permit not the same to be made, to the no little Damage and Grievance of them the said S. and I. and contrary to the Custom that has hitherto been held and approved in that City: Therefore we command you, that having heard the Complaint of them the said S. and I. in this Matter, and having called before you R. and S. and, from hence, heard the Reasons of the Parties thereupon, you further cause to be done to the same S. and I. in the Premises, that which of Right, and according to the Custom of the City aforesaid, hath been done, and in the like Case hath hitherto been used to be done. Witness, &c.
- C And by that it appeareth, that by the Custom of *London* one Joint-tenant, or Tenant in Common, shall have a Writ of Partition against his Companion.
 And Partition may be made in the Chancery, where one of the Coparceners is in Ward to the King. 38 H. 6. 9.
- D And Partition may be made of an Advowson or of a Reversion, that one shall have the Reversion of such Acres, and another shall have the Reversion of other Acres; and such Partition may be without Deed. *6 Ed. 3. 47.* 11 H. 4. 61.
28 H. 6. 2.
9 Aff. 23.
3 Ed. 4. 9, 49.
45 Ed. 3.
Partition 7.
- E And it appeareth in *3 Ed. 4.* that Tenants in Common may make Partition by Deed. 9 H. 6. 5, 7.
19 H. 6. 25.
2 H. 7. 5. ac.
47 Ed. 3. 24.
3 Ed. 4. 9.
19 H. 6. 25.
that they cannot.
21 Ed. 3.
Partition 9.
21 Ed. 3. 31.
Partition 10.
Thorp.
- F And Partitions betwixt Husbands and Wives shall bind the Wives, if they be equal. And by Partition made of a Manor without speaking of the Advowson, the Advowson doth remain in Common. And Joint-tenants do make Partition of a Mill without Deed, and adjudged good. *Trin. 47 Ed. 3. 5 H. 7. 22. 7 Aff. 19. 45 Ed. 3. 12.*
- G (a) If one Coparcener doth lease her Part unto another Coparcener for Years, yet she shall have a Writ of Partition against her Sister during the Term of Years. *22 Ed. 3. 57. [17.] Dyer 52.*
- H After Partition in the Chancery, she which is within Age, after she cometh of full Age, if she have too little, shall have a Writ de *Partitione faciendæ*

(a) See *21 Ed. 3. 57. a. b.* In a *Partic' faciendæ*, by *A.* against *B.* who pleads, that the Plaintiff had leased to him his Purparty for five Years, and that, saving to him his said Term, he is ready to make Partition, and always has so been, and his Protest was entered on the Roll. *Sc'ns.* to have Damages, replied, that he had not been always ready, *Et non allecatur.* For

although he counts *ad Damnum*, yet no Damages shall be recovered, and therefore a Partition was awarded with a Saving of the Term, and by *Candish* the like Law is in a *Nuper ebit*, Account, *Perambulatione faciendæ.* But by *Strange* and *Martyn*, the Plaintiff shall recover Damages. *7 H. 6. 35. b.*

The Remedy against her Sister; or a *Scire facias*, upon the Record of the Partition in the Chancery, against her Coparcener, which shall be returned into the Chancery, *&c.* to shew wherefore new Partition or Extent shall not be made, *&c.*

10 Ed. 1.
Partition 21.
Co. Lit. 4.
Hil. 34 Ed.
Welden and
Bridgwater's
Case ac.
Co. Lit. 4. a.

And Partition betwixt Coparceners, that one shall have the Occupation of the Land from *Easter* until *August*, solely and in Severalty to herself, and then that the others shall occupy the Lands solely and severally from *August* to *Easter*, yearly to them and their Heirs, is adjudged a good Partition in the Time of King *Ed. 1. Co. Lit. 167. b.*

And by the same Reason it seemeth a good Partition, if two Coparceners have two Manors by Descent, and they make a Partition, that one shall occupy one Manor one Year, and the other the other Manor for that Year, and then that he who occupied one Manor one Year, should occupy the other Manor for the Year following; and so they and their Heirs shall change every Year, and occupy the Manor which the other Coparcener did occupy the Year before.

And also Coparceners may make Partition for Term of Life, or for Years. *20 H. 6. 13. Lit. 57.*

V. 57 Lit. ac.
20 H. 6. 14.

And also Partition, that one shall have the Land which is intailed, and the other the Fee-simple Land, is a good Partition; and the Process in this Writ is *Sum', Attachment* and *Distress* infinite (a).

(b) Writ de Excommunicato capiendo.

20 H. 6. 1.
Not good by
his ordinary
Seal, 8 H. 6. 3.
The Archdea-
con doth cer-
tify, and it is
said, that he
was Ordinary
immediate,
and yet it is
doubted whe-
ther good or
no, because the
King cannot
have Benefit
to feize Tem-
poralties, for
that he hath
not Tempo-
ralties as a Bi-
shop hath.

BEFORE this Writ shall be granted, the Contumacy and Contempt made by the Party unto Holy Church ought to be certified into the Chancery by the Bishop by Letters under his Seal. But this Certificate by Letters may be made into the Chancery by a Bishop elect, before he be consecrated: And also the same may be certified by Letters of the Chancellor or Vicar-General, when the Bishop is beyond the Seas, or out of his Diocese, *in remotis agend'*, *&c.* And although the Bishop be in his Diocese, yet the Certificate of the Vicar-General by his Letters unto the Chancery, reciting that the Bishop is *in remotis agend'*, is good, and shall not be traversed. And in time of Vacation of the Bishoprick the Certificate ought to be made by the Guardians of the Spiritualities for the Time being, or by the Archbishop, *&c.* if he be Guardian of the Spiritualities.

And upon this Writ he shall have an *Alias* and a *Pluries*, and if they are not answered, an Attachment against the Sheriff, directed unto the Coroners, returnable in the King's Bench.

(a) If there be Lord, three Coparceners himself, and a Tenant (of the Mesnalty) and one of the Coparceners purchases the Tenancy, this is not only a Partition of the Mesnalty being thereby extinguished for a third Part, but it is also a Division of the Seignory paramount; for

now the Lord must make several Avowries. See *36 H. 6. 7. Co. Lit. 167. b.*

(b) *Paf. 24 Car. 2. B. R. (L. R. 130.) Note;* By *Hale*, the Sheriff cannot break the House on an *Excom' capiendo*.

And

A And if the Excommunicate hath made Satisfaction unto the Church for his Contumacy and Contempt, &c. then the Bishop or Vicar-General, or the Guardian of the Spiritualities, &c. as before is said, ought to certify to the King in the Chancery, that the Party hath made Satisfaction unto the Church for the Contempt, &c. and thereupon he shall have such Writ to the Sheriff, viz. (a)

[63.]

The King to the Sheriff of Lincolnshire, greeting: Whereas we commanded S. and I. who by the Denunciations of the Dean and Chapter of the Church of the blessed Peter of York (the See being vacant); or thus, by the Denunciations of the worshipful Father A. Bishop of Winchester, as excommunicated Persons, and contemning the Keys, to have Justice done them by you by their Bodies according to the Custom of England, until they should make Satisfaction to Holy Church, as well touching the Contempt as the Injury to it by them committed; and now from them the Dean and Chapter; or thus, from him the said Bishop, they have deserved to obtain the Benefit of Absolution in Form, as they the said Dean and Chapter have signified to us by their Letters Patent; or thus, as he the said Bishop hath signified to us, &c. We command you, that without Delay you cause that they the said S. and I. be delivered out of the Prison wherein they are detained, if they are detained in the same upon that and no other Occasion, &c.

B And if the Sheriff will not execute that Writ, he shall have an *Alias* and a *Pluries*, and Attachment against the Sheriff, directed unto the Coroners, returnable into the King's Bench.

C And if the Party excommunicated, who is so taken and in Prison, offer sufficient Caution or Surety, to abide the Ordinances and Rules of the Holy Church, and the Judges there and the Ordinary do refuse for to take such Caution or Surety, then he may have another Writ unto the Bishop to admit of his Caution, and the Writ is such:

(b) *Writ de Cautione admittenda.*

THE King to the Worshipful, &c. *Whereas we commanded A. as one by your Denunciation excommunicated, and contemning the Keys of the Church, to have Justice done to him by his Body by our Sheriff of Lincoln, according to the Custom of England, &c. until he should have made Satisfaction to Holy Church, &c. It is shewed unto us, on the Behalf of the said A. that although the same A. hath frequently offered to you fit Caution to obey the Commands of the Church in Form of Law, that he might by this be able to obtain the Benefit of Absolution: Nevertheless you have hitherto refused to admit from him such Caution, at which we wonder: And because we will not that the same A. be longer detained in Prison*

(a) See *Lib. Parl.* 25 Ed. 3. r. 31. A Petition, that no *Excommunicato cap'* shall issue before a *Scire facias* against the Party, to know whether the Case be Lay, that so the Party may reverse it, if the Matter be Lay, or shew the Matter where the *Excom' cap'* is pleaded against him: But it seems the Keepers of the King's

Conscience at that Time were such, that both were there denied. Though it is hoped Mankind will at length have their Eyes opened to see the Mischiefs occasioned by this Writ. *W. Bobun.*

(b) See *Bacon of Government* 113. touching this Writ.

Writ de Cautione admittenda.

contrary to Justice, we command you, that having accepted the Caution aforesaid from the aforesaid A. you command him the said A. to be delivered from (a) the Prison wherein he is detained by occasion of the Premises, otherwise we ourselves will execute that which is ours in this Behalf.

And if the Bishop will not send unto the Sheriff to deliver the Person so excommunicated, then he shall have such a Writ out of the Chancery for to deliver him.

The King, &c. On the Behalf of A. who by the Denunciation of the Worshipful, &c. and rehearse the Writ sent before unto the Bishop for Deliverance of the Prisoner, &c. And because we will not that the same A. be detained longer in Prison contrary to Justice, we command that you go in your own Person to the aforesaid Bishop, and on our Behalf advise and effectually direct him, that having accepted the Caution aforesaid from the same A. he command him the said A. to be delivered from the Prison aforesaid. And if the said Bishop or the Keeper will not do it in your Presence, then do you cause him the said A. to be delivered out of the Prison aforesaid, if he be detained in the same upon that and no other Occasion. Witnesses, &c.

And upon this Writ he shall have an *Alias* and a *Pluries* unto the Sheriff; and if he do not serve the Writs, he shall have Attachment against the Sheriff, but so shall he not have against the Bishop, &c.

And if the Bishop do certify by his Letters into the Chancery, that he hath sent unto his Official or Archdeacon to absolve the Party excommunicate, then the Party shall have a Writ unto the Sheriff rehearsing these Letters, &c. *We command you, that without Delay you cause the aforesaid A. to be delivered out of the Prison wherein he is detained, when it shall appear to you that he is absolved from his Excommunication by the aforesaid Official or Archdeacon, if he be detained in the same upon that and no other Occasion. Witnesses, &c.*

And upon that Writ he shall have an *Alias*, *Pluries*, and Attachment against the Sheriff, if he do not serve the Writ.

And yet it seems that the Official or Archdeacon to whom the Bishop hath sent his Letters to absolve the Party, is not bound to certify the Sheriff, that he hath such Letters; but the Sheriff ought to go or send to them to know the Truth thereof, and thereupon to deliver the Party: And the Bishop, or he who excommunicated him, and upon whose Certificate the Party was taken, may command the Sheriff to deliver him, as it appeareth by the Writs in the Register.

And if a Man be excommunicated, and taken by a *Significavit*, and after he offers Caution unto the Bishop to obey the Church, and the Bishop do refuse, for which he sueth a Writ to the Sheriff to go unto the Bishop, and to warn him to take Caution, &c. now if the Bishop think in his Conscience, or standeth in Doubt whether the Sheriff will deliver him by that Writ, the Bishop may purchase another Writ directed to the Sheriff reciting the Case, and in the End thereof, *We command you, that by no means you deliver him the said A. from the Prison aforesaid, unless at least he offers Caution by Pledges in your Presence to satisfy the same Bishop, without the special Mandate of us or of him the said Bishop in this Behalf. Witnesses, &c.*

(a) See *Rot. Claus.* 7 H. 3. (5.) m. 2. *tunc, &c. infra Ecclesiam absolvere vetitis. Quære the Canons Temp. H. 1.*

- A And if the Bishop do take Caution of the Party to obey Holy Church, then the Bishop may certify the same into the Chancery, and thereupon the Party shall have a Writ unto the Sheriff for to deliver him.
- B And if the Sheriff do deliver such Persons excommunicate without Order of Law, then upon Complaint of the Bishop into the Chancery, he shall have a new Writ unto the new Sheriff rehearsing the Matter, commanding him to take the said Person, and to detain him in Prison; and also in the same Writ he shall command the Sheriff to make the old Sheriff to answer the King in his Bench for the Contempt: And if the Sheriff who setteth the Party at large be yet Sheriff, then it seemeth the Writ shall be awarded unto the Coroners to apprehend the Party excommunicated, and to cause the Sheriff to appear, &c. as before is said. Register 67
1 Lutw. 123
- C And if a Man be excommunicated before the Chancellor of Oxford, &c. and the Chancellor doth certify this Excommunication into the Chancery, &c. upon the same Certificate the King shall award a *Significavit* unto the Sheriff to apprehend the Party; and the Writ shall be such: *Whereas of our especial Favour we have granted, (a) that the Chancellor of the University of Oxford for the Time being may signify and certify by his Letters Patent to our Chancellor of England for the Time being, of the Names of all Persons of the Jurisdiction of the said Chancellor of Oxford, who are tied in the Bond of the greater Excommunication, and that our said Chancellor for the Time being may cause our Writs to be made and sealed under our Great Seal, for the taking of them who shall thus by the said Chancellor of Oxford be excommunicated, and shall continue so for forty Days (b) upon the Significavit or Certificate of him the said Chancellor of Oxford aforesaid, as in our Letters Patent thereof made is more fully contained; and John F. Chancellor of the University aforesaid, &c. by his Letters, &c. that W. of B. &c. of his Jurisdiction for his, &c. as in the Writ. And quere if the University of Cambridge have such Privilege; it seemeth they have.*
- D If a Man be sued in the Spiritual Court, and he purchase a Prohibition and deliver the same, and notwithstanding they proceed, for which Cause the Defendant sueth an Attachment upon the same Prohibition, and pendent the Attachment the Defendant in the Spiritual Court is excommunicated, and the same certified into the Chancery, by reason whereof a *Significavit* is awarded unto the Sheriff against the Defendant for to take him: Now the Defendant may come into the Chancery, and shew how that he had a Prohibition, and an Attachment thereupon against the Party, and that pendent the Attachment he is excommunicated, and the *Significavit* awarded to take him. (c) Now upon that he shall have a *Supersedeas* directed unto the same Sheriff, reciting 2 H. 4. 3.

(a) *Vide Lib. Parl. Ed. 1. 194. Rot. Pat. 9 Ed. 3. Pars 1. m. 10. Pat. 12 Ed. 3. Pars 2. m. 8. Pat. 14 Ed. 1. Pars 1. m. 47. Pat. 21 Ed. 3. Pars 3. m. 22. Pat. 26 Ed. 3. Pars 1. m. 24.*

(b) See 20 H. 6. 25. That within the forty

Days there might be an Appeal to the Court of Rome.

(c) See the like Writ, *Rot. Claus. 7 H. 3. m. 6. Quia constat nobis in Mandatorio nostro nos fuisse Circumventos.*

all the Matter, commanding him not to take him; and if he do take him for the Occasion aforesaid, that he deliver him *donec Placitum dicti Attachiamen't fuerit discuss'*, &c. And this Writ shall issue out of the Chancery, (a) if the Attachment be not returned into the King's Bench. But if the Attachment be returned into the King's Bench, then he shall have this Writ of *Superfedeas* out of the King's Bench, or out of the Chancery, at his Pleasure. And it ought to appear by the Certificate of the Bishop, that he hath been excommunicated by the Space of forty Days, before the *Significavit* shall be awarded.

And if a Man be sued in the Spiritual Court, or the Bishop sue or cite him *ex Officio*, and excommunicate him, and certify the same into the Chancery, and upon the same a *Significavit* is awarded unto the Sheriff for to apprehend him, &c. and afterwards the Official by Letters certify into the Chancery, that he hath appealed from that Sentence unto the Court of *Rome*, or unto the Court of *Canterbury*, &c. then upon that Certificate he shall have a Writ of *Superfedeas* directed unto the Sheriff, reciting that he hath appealed, commanding him not to apprehend him *pending the Appeal in the Business aforesaid*; or thus, to surcease, *until we shall have ordained otherwise from our Council, or until such a Day*; or thus, to surcease, &c. and he hath apprehended him *on that Occasion, then that he cause him to be delivered out of the Prison aforesaid, &c. wherein, &c.*

And after the *Significavit* awarded against the Party, if he bring the Pope's (b) Bulls into the Chancery, testifying that he hath appealed from that Sentence, &c. he shall thereupon have a *Superfedeas* unto the Sheriff; and in the *Superfedeas* it behoveth not to make mention of the Pope's Bulls, but to say, *That as by certain publick Instruments, &c.* And he ought to prove his Diligence in suing his Appeal by Witnesses, or by Oath, and within the Year of the Time of his Appeal sued. And the Rule in the Register is, Writs of *Superfedeas* (*hanging Appeals*) ought not to be; if it do not appear upon Record in the Chancery that the *Significavit* is granted and passed, &c.

And this Writ of *Significavit* doth not lie but where a Man is excommunicated by a special Name, and in a special Suit against him by the Ordinary *ex Officio*, or by the Party; for that is called *the Sentence of the greater Excommunication*, and upon Certificate thereof in the Chancery doth the Writ lie. But

(a) But yet by *Morris and Thorp*, in the like Case, they would not grant a *Superfedeas* out of Chancery, while the Common Pleas, where the Attachment is returnable, is open. 38 *Ed.* 3. 14.

(b) So that an Appeal to *Rome* was sufficient for a *Superfedeas*. 20 *H.* 6. 26. Yet a Repeal of an Excommungement made by Judges delegated by the Pope was not sufficient to make one responsible against a Certificate of Excommunication by the Archbishop. 16 *Ed.* 3. *Excom* 4.

And Note well 14 *H.* 4. 14. where on a Sentence given at the Court of *Rome*, a Delegacy was made to the Archbishop of *Canterbury*, to execute the Excommungement, yet the Party was still responsible, for that the Archbishop did this not as Archbishop or Judge, but only as an Officer, and therefore he cannot absolve him till Agreement made with the Party. See *Rot. Parliament.* 8 *Ed.* 2. m. 7. *Petitio abbatis de Rufford.*

where he is not especially excommunicated, &c. (a) although that the Bishop certify that he is excommunicated *in the Sentence of Excommunication*, upon that this Writ of *Significavit* doth not lie, for they ought to exprefs the Cause, and sue against him specially in the Certificate.

Upon an Excommengement certified by the Pope's Bulls, a *Significavit* shall not be granted.

If a Bishop certify an Excommengement into the Chancery, made in Time of his Predecessor, and the Contumacy, &c. he shall have a *Significavit* thereupon: But upon the Certificate of the Commissary (b), or Official, of an Excommengement in the Chancery, and of the Contumacy, a *Significavit* shall not be granted; nor upon the Certificate of an Abbot, who hath ordinary Jurisdiction, of an Excommengement in Chancery, a *Significavit* shall not be granted.

[65.]
12 Ed. 4. 15.
16.
14 H. 4. 14.
8 H. 6. 3.
20 H. 6. 1.
7 Ed 4. 14.

A If a Bishop certify in Chancery, that another Bishop hath certified him that the Party is excommunicate in his Diocese, and so hath remained by the Space of forty Days; the same Certificate is void, and a *Significavit* shall not be granted thereupon.

B If a Man be excommenged in the Spiritual Court, and the Bishop certify the same in the Chancery, and hath a Writ of *Significavit* directed unto the Sheriff to apprehend the Party, and the Defendant do appeal unto the Court of *Rome*, and hath Bulls and Instruments exhibited into the Chancery to prove the same; then upon these Bulls, &c. shewed in Chancery, he shall have a special *Scire facias*, rehearing all the Matter, directed unto the Sheriff, to warn the Party at whose Suit he was excommunicated to appear in the Chancery at a certain Day, to shew Cause why he ought not to surcease to apprehend the Party so excommunicated depending the same Appeal; and also commanding the Sheriff to take sufficient Sureties, who will answer Body for Body, for him who is so excommunicated, to pursue, &c. and to do unto the Party as the Court shall award, and that then he do surcease to apprehend him. And if the Sheriff return the Writ of *Scire facias*, that he hath warned the Party, and hath sent that Writ unto the Bailiff of the Liberty, who had given him Answer, that he had warned the Party at whose Suit he

(a) Nota; Excommunicatio aut fertur a jure, & tunc est pœna delicti, vel ab homine & tunc est pœna Contumacie in non veniendo vel parendo, utraq; autem vel Major quia privat a Receptione Sacramentorum & ab hominum consortio qualis est hodie in usu, and is commonly called at this Day, Excommunicatio vel Minor quæ excludit a Præceptis Sacramentorum estq; lata vel a lege ut per Excommunicationem Excommunicato, vel ab homine licet raro. Lib. de Rubric. de Sententia Excom'. Note; In certifying an Excommengement, the Cause must be expressed, and if not sufficient, the Party shall have a Writ out of Chancery to assail him. 14 H. 4. 14. It seems the Cause need not be certified, but where a Prohibition is

brought against the Bishop; but on a general Certificate it shall be intended to be for the same Cause as is in the Prohibition. 28 Ed. 3. 97. a. 22 Ed. 4. 20. a. 20 Ed. 3. Excom. 9. 15 H. 7. 16. See 3 H. 4. 3. b.

(b) See 11 H. 4. 64. a. by Hankf. at the ancient Common Law, a Commissary might certify Excommunication; but he was restrained by Parliament.

And note the Cause why none inferior to a Bishop can invoke the Aid of the temporal Arm, Lindw. de Senten' Excom' cap' Præterea, &c. See 11 H. 4. 64. 7 Ed. 4. 14. but otherwise of committing of Administrations or Probate of Wills.

Writ de Cautione admittenda.

was so excommunicated, to appear in the Chancery at the Day given by the Writ, &c. Now if the Party who was returned warned doth not come to appear, then he who was excommunicated shall have another Writ unto the Sheriff for to deliver him, &c. if he hath apprehended him; and if he hath not taken him, that he do surcease for to apprehend him, &c.

And if a Man be excommunicated by the Bishop, and after the Vicar-
C General certifieth the same into the Chancery, because the Bishop is *in remotis*, for which a *Significavit* is granted, and he is taken by it; and then he who is apprehended, by his Friends sheweth in the Chancery how that he hath appealed unto the Court of *Canterbury*, which he followeth with Effect: Upon this Surmise he shall have a Writ unto the Sheriff, who hath the Party excommunge in his Custody, commanding him that he warn the Bishop or the Vicar-General, and him who sued the Process against the Party excommunge to appear in a certain Day in the Chancery, to shew wherefore the Party should not (*pending the appeal*) be delivered; and also to cause the Party excommunge under safe Custody to come, and to do as the Court shall consider in the said Cause.

If the Bishop do excommunicate a Man, and certifieth the same into the
D Chancery, and thereupon a *Significavit* is awarded, and the Party taken thereby, and he sueth Appeal in the Court of *Canterbury*, or of *Rome*, &c. and hath a *Scire facias* against the Bishop as aforesaid, and against the Party, to answer in Chancery, and shew Cause why he should not be delivered; by which the Bishop and the Party are warned, and appear not, for which Cause the Party is delivered: Now if he who is excommunicated will sue any Action in the Common Pleas, or in the King's Bench, or elsewhere, if he think the other Party will plead the Excommunication against him in the Common Pleas, or elsewhere, then he shall have a special Writ of *Significavit* unto the Justices of the Court where he sueth, rehearsing all the Matter as aforesaid, &c. commanding them to proceed *according to the Law and Custom of the Realm*.

If the Bishop certify into the Chancery an Excommunication made at the
E Suit of any one, and thereupon a *Significavit* is awarded, and the Party apprehended; now he who is apprehended may by his Friends shew in the Chancery, that he sued an Appeal from that Sentence in the Court of *Canterbury* with Effect, and by *Scire facias* against the Bishop, and the Party at whose Suit he was excommunicated, returned at a certain Day into the Chancery: And thereupon he shall have a Writ unto the Sheriff, rehearsing all the Matter, commanding him thereby to warn the Bishop and the Party to be in the Chancery at the Day of the Return of the Writ, to shew what they can say, wherefore the Party shall not be delivered; and also by the same Writ commanding the Sheriff, that he take sufficient Sureties of the Party excommunicated to appear in the Chancery at the same Day, and to carry him back again unto Prison, if the Court at the same Day shall so think fit; and in the mean time to let him go at large by his Sureties, &c. and then if at the Day of the Return of the Writ the Party excommunicated doth not appear, nor his Bail, then shall a new Writ be awarded unto the Sheriff to apprehend the Party excommunicated again, &c. until Satisfaction shall be made
by

by him to Holy Church, as well for the Contempt as the Wrong; and also to arrest the Bail to appear before the King in his Bench at a certain Day, &c. as well to satisfy us as the aforesaid Bishop, and him at whose Suit he was excommunicated; and farther to do as the Court shall award. And if at the Day given in Chancery by the Writ of *Scire facias* the Bishop, and the Party at whose Suit he was excommunicated, do appear, and also he who was excommunicated, and the Matter cannot be determined that Day; then Day shall be given over unto both Parties, at a certain Day at another Term, &c. and then the Party excommunicate shall have a special *Superfedeas* unto the Sheriff, rehearsing the whole Matter, commanding him that he do not apprehend him till that Day, &c. if he have not other Commandment from the King, &c.

- A There are other Writs in the Register, which are called Writs of *Significavit*, because they shall not be granted before that the Bishop hath made Certificate by his Letters under his Seal of the Matter in the Chancery, upon the which the Writs shall be so granted. And the Writ is, where a Man is a Clerk convict of Felony, and afterwards makes his Purgation; now the Bishop shall certify this Purgation into the Chancery by his Letters, &c. and thereupon the Clerk convict shall have a special Writ out of the Chancery, directed unto the Sheriff, to restore him to his Goods and Chattels. [66.]

The King to the Sheriff of Lincolnshire, greeting: Whereas C. of P. Parson of the Church of R. lately convicted of Ravishment of the Wife of S. and of carrying away his Goods, being delivered to the Bishop, as the Manner is, hath there lawfully purged his Innocency touching the same Crime before the said Ordinary, as the same Bishop hath signified to us by his Letters Patent; We of our special Grace command you, that without Delay you restore to the same C. his Lands, Goods and Chattels by you taken into our Hand, by occasion of the Premises, unless he fled upon that Occasion. Witness, &c.

And the like Writ for the Heir of the Clerk after his Death, to deliver the Lands unto him, &c. and in the End of the Writ are these Words, *Without Delay of our special Grace*, by which it seemeth that these Words, *Of our special Grace*, are not necessary Words, but Words of Form for the King's Honour, and that the King of Right ought to make such Restitution.

- B And if a Man do demand his Clergy before the Justices, and reads as a Clerk, and the Ordinary is demanded, and cometh not, for which the Justices command the Clerk to Gaol again, &c. now at the Suit of the Ordinary, or of his Vicar-General, unto the King, or his Chancellor, he shall have a Writ out of the Chancery directed to the Justices of Gaol-Delivery reciting the Matter, commanding them that they send unto the Gaoler to deliver him unto the Ordinary. Clergy. Vide 4 Fd. Dyer 215. Stamf. 103.

- C And if a Man be taken out of a Church, or out of Sanctuary against his Sanctuary. Will: Now if the Bishop certify the Matter by his Letters Patent under his Seal into the Chancery, &c. desiring Restitution; then the King shall send his Writ unto the Justices of Gaol-Delivery reciting the Matter, commanding them to bring back the Party to the Place from whence he was taken.

Writ de Homine replegiando.

If an Abbot or Prior certifieth by his Letters under his Seal, that his Monk, D
Friar, Canon, is vagrant out of his Order, &c. in the Country; then upon
that Certificate he shall have a Writ unto the Sheriff, to arrest and apprehend
him, and to deliver him unto his Abbot or Prior, &c. or to their Attorney,
to chastise him according to the Rule of his Order, &c.

Writ de Homine replegiando.

Stamf. 71. **I**N divers Cafes a Man shall not have this Writ, although he be taken and E
detained in Prison: As if a Man be apprehended for the Death of a Man,
or be taken by the King's Command; (a) or if a Man be apprehended by
the Command of the Chief Justice, as it appeareth by the Register. But the
West. 1. c. 5. Statute of *West.* 1. is, That he shall not be repleviable, if he be taken by
the Command of the Justices, and doth not say of the Chief Justice.

And also if a Man be taken by the Command of the Justices of the Forest,
or if a Man be outlawed, or if a Man abjure the Realm, or if a Man be
Approver, or if a Man be taken for Felony with the Manner; or those who
break the King's Prison, or those who are common or known Thieves, or those
who are appealed by Approver so long as the Approvers live, if they be not of
good Fame, or for burning of Houses feloniously, or those who counterfeit
the King's Money, or the King's Seal, or those who are taken by Certificate
Post. 189. of the Bishop by a Writ *de Excommunicato capiendo*, or those who are appre-
hended for Treason, or those who are convict by a Writ of *Rediffessin*, &c.
all these Persons are notailable by this common Writ *de Homine replegi-
ando*. But first they ought to make their Fines, or agree with the King, and
thereupon to have a special Writ to the Justices, or those who do keep them
in Prison, reciting how they have been fined, commanding them for to de-
liver them.

8 H. 4. 21. (b) And if two or three Men be taken and imprisoned, they may sue a F
but 8 H. 4. 16. joint Writ *de Homine replegiando*. And yet *H. 8 H. 4. 31.* such a Writ sued
contra. by two was abated; but yet it seems the Law is, they may sue jointly, and
See 73. D. & the Writ shall be such:
9 H. 4. 2.

*The King to the Sheriff of Lincolnshire, &c. We command you, that justly
and without Delay you cause to be replevied B. C. and D. whom you yourself have
taken, and doft keep taken, as it is said; or, whom D. and E. have taken, and
do keep taken, as it is said, unless they were taken by the special Command of us,
or of our Chief Justice, for the Death of Man, or for our Forest, or for any other
Right for which they may not be replevied according to the Custom of England,
that we may bear no more Clamour thereupon for want of Justice. Witness, &c.*

(a) See 14 H 6. 8. A Diversity where one
is imprisoned on a Suggestion without Writ, as
by Justices of Peace, Magistrate of a Town, or
Lord of a Vill or Manor, on the Statute of La-
bourers, &c. there he may be discharged by

them without any Writ from the King; but it is
otherwise if they are imprisoned by Writ.

(b) See accordant 8 Ed. 4. 16. a. 12 Ed. 4. 4.
con. 8 H. 4. 21. b.

And

And upon that he shall have an *Alias* and *Pluries*, and Attachment, if need be. But if he who apprehendeth the Man do claim him as his Villain, and the same is returned by the Sheriff upon the *Alias* or the *Pluries*, then the Plaintiff shall have another Writ of *Pluries* to the Sheriff, thus :

The King to the Sheriff, &c. Whereas we have oftentimes commanded you, that justly, &c. W. whom H. took, and keeps taken, as it is said, unless he was taken, &c. and be not replevisable, or that you should signify to us the Cause wherefore, &c. and you have returned to us, that you went to the Manor of the aforesaid H. there to replevy the aforesaid W. according to the Tenor of our Command aforesaid; but the aforesaid H. hath not permitted Delivery of the Body of him the said W. to be made, because he affirmeth him the said W. to be his Villain and Fugitive of his Manor aforesaid, by claiming Right of Villainage and Servitude in the Person of him the said W. within the Dominion of his Manor, &c. We being unwilling that the aforesaid W. if he be a Freeman, should be destitute of the Common Law by such Taking and Claim, command you, that if the aforesaid W. shall find you sufficient Caution, &c. to be before us from the Day of Saint Michael in fifteen Days, &c. to answer the aforesaid H. if, &c. then cause him the said W. in the mean time to be replevied according to the Tenor of our Commands, &c. And nevertheless, if the aforesaid W. shall make you secure touching his Claim, &c. then put by Gages, &c. the aforesaid H. that he be before us on the aforesaid Day to answer the aforesaid W. of the Taking and Claim aforesaid: And have you there the Names of the Pledges and this Writ, &c. [67.]

And in the same Manner it shall be done in a *Homine replegiando*: If the Defendant claim the Plaintiff as his Ward, then upon that returned at the *Pluries* by the Sheriff, the Plaintiff shall have a special Writ as aforesaid, reciting that he holdeth the same Land of the Defendant by Socage, and not by Knights Service; commanding the Sheriff for to deliver him, and to admit the Defendant by Pledges to appear at a certain Day, as afore is said, to answer unto the Plaintiff, &c. 11 H. 4. 25.

A And if a Man be taken within the Cinque Ports, then he shall have a Writ *de Homine replegiando*, directed unto the Constable of *Dover*, and unto the Warden of the Cinque Ports, or his Lieutenant, in the Nature of an *Audita Querela*, and the Writ shall be,

The King to his beloved, &c. Constable of his Castle of Dover, &c. and to the Warden of his Cinque Ports, or his Lieutenant, greeting: We command you, that having heard the Complaint of A. whom B. took, and keepeth taken within the Liberty of the Ports aforesaid, as it is said, and having called before you the Parties aforesaid, and having heard their Reasons severally thereupon, you cause him the said A. to be replevied, if he be replevisable according to the Law and Custom of the Ports aforesaid, unless he be taken by the special Command of us or of our Chief Justice, &c. that we may bear no more Clamour thereupon for want of Justice, &c.

And if a Man be taken by the Officers of the Forest, then he shall have a Writ *de Homine replegiando* unto the Keeper of the Forest, in such Form, viz.

The King to his beloved and faithful W. of B. Keeper of his Forest on this Side Trent, or his Lieutenant in the Forest of S. We command you, that if A. and B. taken and detained in the Forest of S. for Trespass of Venison by them done, as it

is said, whereof they are indicted, shall each of them find you (to wit) twelve honest and lawful Men of your Bailiwick, who shall be Mainprize, to have them before our Justices (a) next in Eyre at the Pleas of the Forest in the County of N. when they shall come into those Parts, to stand to the Right touching the Trespass aforesaid; then in the mean time that you deliver them the aforesaid A. and B. in Bail to the aforesaid twelve Men, as is before said, if according to the Assise of the Forest they shall be replevisable: And have you there the Names of those twelve Men and this Writ. *Witness, &c.*

And if the Warden will not bail him, he shall have an *Alias* and *Pluries* B against the Warden, directed unto the Sheriff, to attach him to answer before the King in his Bench, and to shew wherefore he has not replevied him, &c. And in the same Writ it shall be contained, that he call to him the Verderors, to deliver him who is so taken in the Presence of the Verderors by good Bail, and that the Sheriff do deliver the Names of the Bail unto the same C Verderors, to answer before the Justices in the next Eyre. And no Man shall be taken nor imprisoned for Vert or Venison, if he be not found in the Manner, or indicted; in which Case he shall be set to Bail by the Warden *ex Officio*, or otherwise by Writ, as is aforesaid, &c.

For hunting in the King's Chafes, or in the Chafes of other Men, he ought D to be sued at the Common Law; and for the same a Man shall not be taken and imprisoned, until he be convicted at the Common Law in an Action there brought against him. But for hunting in Parks, &c. the Party shall have an Action within the Year and Day upon the Statute of *West. 1. cap. 20.* But after the Year and Day the King shall have Suit.

Replevin of a Park. And if a Man hath any Park within the Bounds of any Forest, which Park E is not inclosed according unto the Assise of the Forest, &c. then it shall be seized into the King's Hands; and then the Party shall have a special Writ of Replevin, to replevy a Park out of the King's Hands: And the Writ is such;

The King to his beloved and faithful W. B. Keeper, &c. or to his Lieutenant in the Forest of S. greeting: We command you, that you cause to be replevied the Park of A. of B. and J. (to the same A. until the Coming of the Justices of the Pleas of the Forest in the County aforesaid) which is within the Boundaries of our Forest aforesaid, and which is seized into our Hand, because it is not inclosed according to the Assise of the Forest, as it is said, if it be replevisable according to the Assise of the Forest. Witness, &c.

5 H. 7. 3. In a *Homine replegiando* the Defendant claims the Plaintiff for his Villain, F
13 H. 7. 17. and the Plaintiff pleads that he is free, and saith that the Defendant hath
but the better taken his Goods, and prays that he may gage Deliverance, &c. for which
Opinion is, the Defendant doth gage Deliverance. But the Plaintiff shall not find Sure-
that it is in the ties that he shall re-deliver the Goods, &c. if he be found Villain. *Quod vide*
Judges Dis- M. 6 Ed. 4. 8.
cretion. But

6 Ed. 4. 8. & But in a *Homine replegiando*, if the Defendant claim the Plaintiff as his Vil- G
12 Ed. 4. 4. lain, the Plaintiff ought to find Sureties to deliver his Body to the Defendant,
that he shall not find Surety. if he be found his Villain. *Quod vide P. 31 Ed. 3.*

(a) See in' *Roll' Ordinationum anno 5 Ed. 2.* of Indictments of the Forest.

- A In a *Homine repleg'* the Plaintiff was bound in a Recognizance in a certain Sum of Money unto the Defendant's Use, that he would sue him *cum effectu*; and if the Writ be abated for any Cause, yet he ought to sue another Writ for that Taking, &c. otherwise he shall forfeit that Recognizance, as it appeareth. *H. 8 H. 4.*
- B If a Man sue a *Homine repleg'*, and the Defendant claim the Plaintiff for his Villain, if the Sheriff return the same upon the *Alias*, or upon the *Pluries*, in the King's Bench or Common Pleas, where the Writ is returnable; then upon Sureties found in Court where the Writ is returned by the Plaintiff to yield his Body, &c. he shall have a special Writ unto the Sheriff for to deliver the Plaintiff out of Prison, &c. But by the Register he shall have a special Writ unto the Sheriff to take Sureties of the Plaintiff, and to sue with Effect, and to yield his Body, if, &c. But the Usage at this Day is, that he find Sureties in Court, &c. and not to award a Writ unto the Sheriff to take Sureties. *Quod vide M. 8 H. 4. 3.*
- C And in a *Homine repleg'*, if the Sheriff return that the Defendant hath es-joined the Plaintiff's Body, so that he cannot deliver him; then the Plaintiff shall have a *Capias in Withernam* to take the Defendant's Body, and to keep the same *quousque*, &c. (a) whether he be a Peer of the Realm, or other common Person. And if the Sheriff return *Non est inventus* in this *Capias in Withernam* of the Body, then the Plaintiff shall have a *Capias in Withernam* against the Defendant's Goods, &c. *Quod vide M. 11 H. 4. in Title of Withernam.* 11 H. 4. 15. b.

(b) Writ de Replegiare de Averiis.

D IF a Man take more live Cattle than one Beast, then the Writ is such:

X 2

The

(a) A *Capias* lies against a Peerefs of the Realm on a Rescous, returned made by the Baron. 1 H. 5. 14. a.

(b) Note; A Replevin is Viscontiel by reason of this Clause, *Et postea eam inde juste deduci fac'*. But by the *Pluries*, without Question the Sheriff's Power to proceed in the County Court is determined; as was clearly held by all. If the Sheriff does not execute the Writ, but returns *Elongata*, it was doubted if the Sheriff shall execute the Writ, by reason the Words (*vel ipse fit*) are Conditionals. 2 H. 7. 5.

Note; on the *Pluries* the Parties have no Day in Court, but only the Sheriff; yet he may return Pledges on the *Pluries*, or on the Replevin if it be found; and yet the Plaintiff may come at the Return of the *Pluries*, and take Issue on the Cause returned by the Sheriff, so as to intitle himself to Damages against the Sheriff, and the King to a Fine for his Contempt. But if at the

Return of the *Pluries*, the Plaintiff, and also the Defendant appear, they may plead, &c. And also (by *Assion*) if the Defendant appears, he may compel the Plaintiff to Count (*instanter*) although they have no Day in Court, and by the same Reason may cause the Plaintiff to be called upon a Nonfuit. See 22 H. 6. 21. *Bromfleet's Case.* 2 H. 7. 5. But the Defendant without Doubt is not compellable to come in at the Day of the *Pluries*, but if he does, he may plead with the Plaintiff, and the Plaintiff may find Pledges in Court instantly. See R. Entr. 56c. b. where the Plaintiff at the Day of the Return of the *Pluries* (if the Writ be executed) may have an Attachment against the Defendant *ad respond' de placito quare cepit Avertia*, &c. R. Entr. 570. Or if the Sheriff returns *Elongata*, then the Plaintiff shall have a *Withernam*, wherein is also contained an Attachment against the Defendant; and by the *Withernam* Day is given to both Parties,

Flow. 223. a. *The King, &c. We command you, that justly and without Delay you cause to be replevied (a) the Cattle of B. which D. took and unjustly detains, as it is said, and afterwards thereupon cause him justly to be removed, that we may hear no more Clamour thereupon for want of Justice, &c.*

But if he take but one live Beast, then the Writ shall be,

The King, &c. We command you, that you cause to be replevied to B. his certain Horse, or his certain labouring Beast, or his Ox, &c. (b).

Dyer 229. a. And if a Man take a dead Chattel, then the Writ shall be,

The King, &c. We command you, &c. that you cause to be replevied to B. his Goods and Chattels. And in the Count he ought to declare of divers Things: But if he take but one Thing which is a dead Chattel, then the Writ shall be,

*The King, &c. We command you, &c. that you cause to be replevied to B. a certain Net, or a certain Swarm of his Bees, or a certain Iron of his Mill. And if the Sheriff doth nothing upon this Writ, then he shall have an *Alias repleg' fac'*, &c. and in the same Writ he may have this Clause; Or signify to us the Cause why you would not or could not execute our Command heretofore directed to you thereupon, &c. And then this Writ shall be returned into the (c) King's Bench or Common Pleas. And if he do not serve this Writ, then he shall have a *Pluries* returnable into the King's Bench or into the Common Pleas: And in the *Pluries* is always this Clause; *Vel causam nobis significes*: But not in the *Alias repleg'*, if not that the Party will have it put in the Writ. And the Plaintiff may sue all these Writs forth together, viz. the *Replevin*, the *Alias* and the *Pluries*, and deliver them unto the Sheriff all at one Time, if he so see good. And if the Sheriff doth not return the *Pluries*, then the Plaintiff may have an Attachment against the Sheriff (d) directed unto the Coroners.*

And

ties, so that if the *Withernam* be returned *tardè*, then the Defendant at the Day may compel the Plaintiff to Count; but otherwise it is, if the *Withernam* be not returned served, because then the Parties have no Day in Court but by the Roll, and therefore the Plaintiff cannot be Non-suit, but may Count. 22 H. 6. 22. by *Newton*.

A Non-suit was in Replevy, where the Plaintiff did not find Pledges; but if the Plaintiff has found Pledges, and the Sheriff on the Attachment in the *Withernam* returns that the Defendant *Nihil*, yet it seems he may come in by a Day on the Roll, and the Plaintiff shall be called; and if he be non-suited, a special Writ of Delivery on the *Withernam* shall be granted to the Defendant, and a Return of the Beasts; notwithstanding the Return of the Sheriff, if in Truth the Sheriff had made Deliverance of them to the Plaintiff or not, and to force the Plaintiff to a second Deliverance. Dyer 189. *Quære* if the Writ of second Deliverance be not taken away by a late Statute.

(a) And he may count of several Takings, Part at one Day and Place, and Part at another Day and Place. 29 Ed. 3. 23. adjudged.

(b) So it may be of a Horse, &c. and if the Sheriff make Deliverance of a Horse to the Defendant, he shall not have Trespass, because he might have claimed Property; but of a Stranger's Horse not Party to the Writ, he may have Trespass against the Sheriff. 14 H. 4. 24. 21 Ed. 4. 16 & 54. And *quære*, Whether Trespass lies against the Sheriff for replevying a Stranger's Beast, by the Plaintiff's own Shewing or Direction. *Kelw.* 119. *per Jod.*

(c) See Dyer 189. A Return in Chancery, and note by the *Pluries* the Power of the Sheriff is determined. 11 H. 4. 49.

(d) See 44 Aff. 15. An Attachment against the Sheriff to have a Replevin directed to the Coroners, and the Sheriff returns the Attachment & *Elongata* for the Beasts; whereupon a *Disfringas* against the Sheriff, with a *Withernam*, issued, and he returns the *Disfringas* with a Taking in *Withernam*; and now comes the Plaintiff, and prays a Writ of Deliverance of the Beasts taken in *Withernam*; and the Defendant comes and prays, that the Plaintiff may gage Deliverance of them, for that Part of the Beasts so taken were dead in Pound, &c. and

F And it appeareth by the Register, that if the Sheriff return upon the *Replevin*, *Sicut alias* or *Pluries*, that he hath sent unto the Bailiff of the Franchise, &c. who hath given him no Answer, or that he will not make Deliverance, &c. then the Plaintiff shall have a *Non omittas* unto the Sheriff, that he enter into the Franchise and make Return; and if the Sheriff doth not do so, he shall have an *Alias non omittas* directed unto the Sheriff, and afterwards a *Pluries non omitt'*, &c. But it seemeth that that Return, *That I commanded the Bailiff of the Liberty, &c. who gave me no Answer*, or the Return that the Bailiff will not make Deliverance of the Cattle, are not good Returns. For by the Statute of *West. 1. cap. 17.* in the End of the Statute it appeareth, that the Sheriff upon such a Return made to him by his Bailiff, ought presently to enter into the Franchise, and to make Deliverance of the Cattle taken: And so it appeareth the Sheriff may do by the Statute of *Marlebridge, cap. 21.* If a Plea of *Withernam* be in the County by Plaint before the Sheriff, and the Sheriff send unto the Bailiff of the Liberty to make Deliverance, and the Bailiff doth nothing, that then the Sheriff *ex Officio* may enter into the Liberty without any Writ directed unto him in that Case.

G (a) And if the Sheriff upon the *Pluries* return, *That the aforesaid B. took the Cattle of the aforesaid A. and hath driven them out of the County aforesaid into the County of T. wherefore he could not replevy them to the said A. &c.* or if the Sheriff return, that he sent to the Bailiff of the Liberty of *D.* who hath Return of Writs, &c. who gave him Answer, that the Cattle are esloined into divers Liberties, by reason whereof he cannot have a View of them, nor deliver the Cattle; or if the Sheriff return, that he himself cannot have View of the Cattle to deliver them; or if he return, that after the Taking, &c. that the Defendant hath esloined the Cattle out of his Bailiwick that he cannot deliver them; or if he return, that the Defendant hath esloined them into unknown Places, that he cannot have View of them to deliver them; or if the Sheriff return, that he sent unto the Bailiff of the Liberty, who answered him, that the Defendant had impounded the Cattle within the Rectory of the Church of *C.* for which Cause he cannot deliver them, &c. Upon these Returns made by the Sheriff, the Plaintiff shall have a Writ of *Withernam* to take as many of the Defendant's Cattle, directed unto the Sheriff; and the Writ shall be such:

[69.]

the Residue he is ready to deliver; and because he had not Part (ready) at the Day in Court, the Plaintiff was directed to sue a Writ to the Coroners to deliver the first Beasts, and to attach the Defendant to answer, and on the Return thereof the Plaintiff might plead, &c.

(a) If the Sheriff return that the Beasts are inclosed in a Park among Savages, or inclosed in a Cattle, &c. he shall be amerced, and another Writ of Replevin shall be awarded; for he ought to have taken the *Posse Comitai'*. 8 H. 4. § 8. for it was a Denial.

On a *Pluries* to the Sheriffs of London, they return the Custom of the City, that Replevin ought to be made in the Sheriff's Court there, and not by the King's Writ; *Et non allocatur*, and an Attachment was granted. *Dyer 254.*

See a Replevin against him who distrained for the King for fifteen Shillings, 20 Ed. 3. *Avowry 130.* 19 Ed. 2. *Avowry 223.* and note on an excessive Distress the Plaintiff may recover Damage there. 11 R. 2. *Avowry 87.*

The

Withernam.

The King to the Sheriff, &c. Whereas we have oftentimes commanded you, that A justly, &c. to A. his Cattle, which B. &c. detains, as it is said, or should signify to us the Cause why you would not or could not execute our Command more than once directed to you thereupon; and you have signified to us, that after the aforesaid B. took the Cattle of the aforesaid A. he drove the same through your County, and from the County aforesaid into the County of C. wherefore you could not replevy them to the said A. We being willing to oppose the Malice of him the said B. in this Matter, do command you, that without Delay you take in Withernam the Cattle of the aforesaid B. in your Bailiwick, and detain them until you can replevy to the said A. his Cattle aforesaid according to the Custom of our Realm, according to the Tenor of our said Commands heretofore directed to you, &c.

And note, that in the Writ of *Withernam* the Cause which the Sheriff returned upon the *Pluries, &c.* ought to be put and rehearsed in the Writ of *Withernam*, as before is said. And if the Sheriff return upon the *Pluries*, that he hath sent unto the Bailiff of the Liberty, and that he answers him, that the Beasts are esloined, &c. then he shall have a *Withernam* directed unto the Sheriff, and the Sheriff shall send his Bailiff into the Liberty to sue the *Withernam*; and if the Bailiff do not Execution, nor give answer unto the Sheriff of the Precept directed unto him, then the Plaintiff shall have a *Withernam* directed unto the Sheriff, with *Non omittas because of any Liberty, &c. but enter the same, &c.* and to take the Cattle in *Withernam, &c.*

(a) And it appeareth by the Register, if a Man sue a Replevin in the County without Writ, and the Bailiff return unto the Sheriff, that he cannot have View of the Cattle to deliver them; then the Sheriff by Inquest of Office ought for to inquire thereof: And if it be found by the Jury, that the Cattle are esloined, &c. then the Sheriff in the County Court may award a *Withernam* to take the Defendant's Cattle. And if the Sheriff will not award a *Withernam*, then the Plaintiff shall have a Writ out of the Chancery directed unto the Sheriff, rehearsing the whole Matter, commanding him for to award a *Withernam, &c.* And he may have an *Alias*, and after a *Pluries* and Attachment against the Sheriff, if he will not execute the King's Command, &c.

(b) And a Man shall have a Replevin of divers Cattle that are taken; as if a Man take divers Cows or Sheep, and afterwards they have Calves or Lambs, the Plaintiff shall have his Replevin of them all, as well as of the Cows and Sheep which were taken.

V. 16 H. 7. 14. And the Sheriff, upon a Complaint made unto him of taking of the Cattle, may command his Bailiff by Word for to replevy them (c); and the Bailiff by Word is as good as by Writing.

(a) See 30 Ed. 3. 23. By the Usage of the City of Northampton, the Frankpledge of the Vill may make Deliverance in the Absence of the Bailiff.

(b) Where on the Issue, that he did not take, and the special Matter found, it shall be adjudged for the Plaintiff. 18 Ed. 3. 43. See 12 Ed. 4. 5.

(c) He may command his Bailiff on a Plaint made to him, and this is by the Statute of

Marlebr. c. 21. and there the Sheriff himself is Judge. 28 H. 6. *Retorn' de Vic.* 17 Dyer 245. But if the Party (Defendant) claims Property, the Sheriff cannot in that Case make Replevin.

See a Replevin against Executors of Goods taken by the Testator, 14 H. 4. 29. 33 Ed. 3. *Avowry* 257. See a Replevin of Beasts, *Domus & Ecclesiæ capti tempore prædecessoris*, 9 H. 6. 25.

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same is as well as if the Sheriff had made his Warrant to his Bailiff to have replevied them; for it may be that the Sheriff nor his Bailiff cannot write, or that they may want such Things wherewith they may write a Warrant, &c.

- F And the Lord shall have a Replevin, if his Villain's Cattle are taken; and yet he had not Property in them at the Time of the Taking, but now by his Claim he hath, &c. But it seemeth he shall not have Damages for the Taking of the Cattle, but only for the Detaining of them, if the same be found for him. 9 H. 6. 26. 42 Ed. 3. 28 or 8. 1 Inf. 145. b.
33 Ed. 3.
Replevin 43.
9 H. 7. 22.
14 H. 4. 4.
- G (a) And if a Man take Cattle for Damage-feasant, and the other tenders Amends, and he refuseth it, &c. now if he sueth a Replevin for the Cattle, he shall recover Damages only for the Detaining of them, and not for the Taking of them, for that the same was lawful, and therefore no Return shall be. See 22 H. 7. 30. *contra* in Case of Trespass.
- H And if the Lord distrain his Tenant's Cattle wrongfully, and afterwards the Cattle return back unto the Tenant; yet the Tenant shall have a Replevin against the Lord for those Cattle, and shall recover Damages for the wrongful Distraining of them, because he cannot have an Action of Trespass against his Lord for that Distress: But against a Bailiff or Servant he may. 1 H. 6. 7.
- I (b) And if a Man do distrain Cattle in one County, and drive the Cattle into another County, the Party may sue a Replevin in which of the Counties he will, but not in both the Counties. See 19 H. 6. 34, &c.
- K And if the Cattle of a Feme sole be taken, and afterwards she marry a Husband, the Husband alone may have a Replevin. *Quod vide Trin. 33 Ed. 3.* See 33 Ed. 3. pl. 43. *Bro. Bar. & Fem. 85. contr.*
- L (c) And in a Replevin, if the Plaintiff do declare, that the Defendant yet hath and detaineth the Cattle, and the Defendant doth appear, and afterwards

(a) See 27 Ed. 3. 8. b. 45 Ed. 3. 9. But if the other had them in Pound before Amends tendred, it is then too late to tender the Amends, and on the Avowry the Defendant shall have no Return till a new Tender, and then the Party may have Detinue. *Quare* 13 H. 4. 17. 14 H. 4. 4. And if he tenders before the Taking, the Taking is tortious, 7 Ed. 3. 8. and if immediately on the Taking, the Detainer is to, and he may recover Damages for it, and no Return shall be awarded to the Lord. 45 Ed. 3. 9.

If the Tenant tenders his Fealty, and yet the Lord distrains and avows for it, the Tenant cannot plead the Tender, without saying he is still ready to perform it, and he ought to make the Fealty in Court. See 3 Ed. 2. *Avowry* 187. If the Tenant tenders his Homage, and the Lord refuse, he cannot afterwards distrain for it, without a new Demand and Refusal. 20 Ed. 3. *Avowry* 123.

(b) See where Replevin does not lie in this Case, but he is put to his Writ on the Statute, and therefore the Writ to the Sheriff of the County where the Beasts were taken was abated. *Temp. Ed. 1. Avowry* 194. *Dyer* 169. *Post* 84. P. See 19 H. 6. 34. 21 H. 6. 11 H. 4. 10. 42 Ed. 3. —

(c) So if the Defendant claims Property, or says that he did not take, &c. If in the mean Time the Beasts die, or are sold, so that he cannot have a Return, he may recover all in Damages, if it be found for him. 7 H. 4. 18. the Defendant claimed Property in C. B. and they are at Issue, and it was found for the Plaintiff, it seems he shall recover the Value of the Thing taken, and his Damages. 11 H. 4. 10. If the Defendant makes Conuſance and avows, and after Day given over makes Default, the Plaintiff shall recover his Damages by Taxation of the Court. 14 H. 4. 2.

Writ de Pone de remover le Plea.

maketh Default; the Plaintiff shall have Judgment to recover all in Damages, as well the Value of the Cattle, as Damages for the Taking of them, and his Cofts. *M. 8 H. 8. Rot. 108. See Lutw. 1150.*

See the Record
hereof Co.
Entr. 610, 611.

Writ de Pone de remover le Plea.

NOTE, That if a Replevin be sued by Writ out of the Chancery, then M if the Plaintiff or Defendant will remove that Plea out of the County into the Common Pleas or King's Bench, he ought to sue a Writ out of the Chancery, which is called a *Pone*; and the Writ shall be such:

The King to the Sheriff of Lincoln. At the Petition of the Plaintiff put before our Justices at Westminster such a Day, the Plea which is in your County by our Writ between A. and B. of the Cattle of him the said A. taken and unjustly detained, as it is said, and summon by good Summoners the aforesaid B. that he be then there to answer the aforesaid A. thereupon: And have you there the Summoners, and this Writ.

And if the Writ of *Pone* shall be removed into the King's Bench, then the Writ is such:

The King, &c. At the Petition of the Plaintiff put before us, wheresoever we shall then be in England, the Plea, &c.

(a) And this Writ is sued for the Plaintiff without putting any Cause in the Writ of the Removement, &c.

[70.] But if the Defendant will remove the Plea in the County upon a Replevin A sued by Writ, then he ought to put an evident Cause in (b) the Writ after the *Teste* of the Writ; and the Form of the Writ is such:

The King to the Sheriff, &c. Put before our Justices at Westminster such a Day, the Plea which is in your County by our Writ between A. and B. of the Cattle of him the said A. taken and unjustly detained, as it is said, and tell the aforesaid A. that he may be there if he will, to prosecute his Plea thereupon against the aforesaid B. And have you there this Writ and the other Writ: Witness, &c.

(a) *Pone* (at the Defendant's Suit) *loquclam quæ est in Com' tuo' int' A. & B. de Averis ipsius A. capi', &c.* and says *præfato* B. where it should be *præfat' A. Rolph* came for A. the Plaintiff in the Replevin, and prayed Damages, because otherwise he had no Remedy; for the *Pone* is abateable, and so held the Court, being without Warrant; and yet it shall not be remanded because both are the King's Courts, and a new *Pone* does not lie in this Case, because the Plaintiff shall stand. *Martyn, Baker and Passon* contra, That a *Pone* or *Recordare* is only to remove the Plaintiff, so that when the Plaintiff is removed, the *Pone* or *Recordare* is determined, and the Court shall hold Plea on the Plaintiff, and not on the Writ of *Recordare*, so that the Pledges first found still remain, and the *Pone* or *Recordari*

shall never abate: And for that the Court in this Case is seized of the Plaintiff, but the Plaintiff has no Day; the Court shall make a special Writ to the Sheriff, to warn the Plaintiff to pursue his Plaintiff. *Et sic factum fuit, 3 H. 6. 2.* A Plaintiff is well removed, although the *Pone* bears Date before the Plaintiff entered. *1 R. 3. 4.* So if the Plaintiff be removed by *Certiorari*, where it ought to be by *Pone* or *Recordari*. See *7 Ed. 4. 23.* So if one Plaintiff is removed where another ought to have been, *ibid* or where there is a Variance between the Plaintiff and the Writ. *6 Ed. 3. 55. 8 Ed. 3. 71.* See *13 Ed. 1. Admeasurement 17.*

(b) But the Cause may be traversable, for that both are the King's Courts. *Vide* the Note *supra* & *Post. 119. G.*

And

And because the aforesaid B. took the Cattle aforesaid within his Fee for Customs and Services due to him, as it is said, if the Cause be true, and the aforesaid B. requires it, let Execution of this Writ be done, and otherwise not. And he (a) may shew divers other Causes: Because the aforesaid B. and C. took the Cattle aforesaid in the Fee of him the said B. for Customs, &c. let Execution be done, &c. as above. Or thus: Because A. the Clerk of D. Sheriff of the County aforesaid, who frequently in the Absence of the Sheriff of the County holds the Pleas of the same County, is the Kinsman of the aforesaid A. for which the same Sheriff favours him the said A. in the Plea aforesaid, as it is said, let Execution be done, &c. as above.

And he may shew any Cause which induceth any Favour that the Sheriff doth or is like to do unto the Plaintiff. Or thus: *Because the aforesaid B. claims the aforesaid A. to be his Villain, and for that Reason asserts the Cattle aforesaid to be his own, for which that Plea ought not to be brought in the County, as it is said, let Execution be done, &c. as above.*

And if a Replevin be sued by Writ in any other Lord's Court than in the King's Court, then the Plea cannot be removed before the Justices by the Plaintiff, nor by the Defendant, without putting Cause in the Writ; and the Writ is, *At the Petition of the Plaintiff put the Plea which is in your County by our Writ between R. and the Abbot of W. and I. of a certain Horse of him the said R. taken and unjustly detained, as it is said; and summon by good Summoners the aforesaid Abbot and I. that they be then there to answer the aforesaid R. thereupon: And have you there this Writ and the other Writ: Witness, &c. Because the aforesaid Abbot is Lord of the Court in C. wherein that Plea dependeth by Return of our Writ, by which the same R. cannot obtain Justice in the Plea aforesaid in the same Court against the aforesaid Abbot and I. as it is said.*

And if the Plea be removed at the Suit of the Plaintiff, then when he hath shewed Cause in the End of the Writ, he shall say afterwards in the same Writ, *For which the same Complainant cannot obtain Justice in his Plea aforesaid against the aforesaid B. in the same Court, as it is said.*

And if the Plea be removed at the Suit of the Defendant, then after Cause shewed in the Writ it shall be said, *For which the same Bailiff favours him the said A. in his Plea aforesaid, as it is said. Let Execution be done, &c. as above (b).*

(a) Per Rolph, the Sheriff cannot return that the Cause is not true, 7 H. 6. 32. and notwithstanding the said Causes, the Defendant may avow for Damage-feasant. 10 Ed. 2. *Avowry* 213, 515. 20 Ed. 3. *Avowry* 130.

(b) See 21 H. 6. 50. If the Plea be removed by the Defendant by *Pone*, at the Day in Bank the Plaintiff shall be called on a Nonfuit; and if he make Default, a Return shall be awarded and

no Procefs; but if the Plaintiff appears, and the Defendant makes Default, a *Distringas* shall issue, and after that Procefs of Outlawry. But if the Plea be removed by *Pone* or *Recordare* by the Plaintiff, there if he makes Default, it is a Nonfuit if the Defendant *Pon' per Vad'*, and thereon issues a *Distringas*, &c. and so Procefs of Outlawry.

Writ de Recordare.

6 H. 4. r.
6 Ed. 6.
Plow. 74.
It appeareth
by the Regi-
ster 6 & 7. Br.
Cause de re-
mover Plea 36.
that by Re-
cordare Pleas
shall be remo-
ved *extra Dur-*
ham & Cestri-
am: Yet there
are Courts of
Record.

27 H. 6. 3.
Quere
Plow. 74.
Bro. Court
Baron 22.

WHEN the Plaintiff is in the County, and the Replevin sued there with-
out Writ; then if the Plaintiff or Defendant will remove that Plaintiff,
he ought to sue a Writ of *Recordare* out of the Chancery directed unto the
Sheriff; and the Writ shall be such:

(a) *The King to the Sheriff of Lincolnshire, greeting: We command you, that in your full County you cause to be recorded the Plaintiff which is in the same County without our Writ, between A. and B. of the Cattle of him the said A. taken and unjustly detained, as it is said, and have that Record before our Justices at Westminster such a Day, &c. under your Seal and under the Seals of four lawful Knights of the same County of them who were present at that Record, and prefix the same Day to the Parties, that they be then there to proceed in that Plea as it shall be just: And have you there the Names of the aforesaid four Knights and this Writ: Witness, &c. Let Execution of this Writ be done, if the aforesaid A. requires it, and otherwise not.*

And thereby it appeareth that the Plaintiff may remove the (b) Plaintiff by *Recordare*; without any Cause put in the Writ; but the Defendant cannot remove the Plaintiff by a *Recordare* without shewing Cause in the Writ, as before is said upon the *Pone*. And the Causes for the Defendant ought to be such; *Because the aforesaid B. in pleading affirms, that he himself took the Cattle aforesaid in his separate Soil, as in his Damage there, in which Soil indeed the aforesaid A. claims to have Common of Pasture, as it is said, which said Plaintiff, for that it toucheth the Freehold (as is aforesaid) in the same County, ought not, according to the Law and Custom of our Kingdom, to be pleaded without our Writ: Let Execution of this Writ be done, if the Cause be true, and the aforesaid A. requires this.*

(a) See 20 *Ed. 3.* 31. Where Beasts were taken in *D.* in the County of *Berks*, which was within the Precinct of the Honour of *Wallingford*, where the Plaintiff had Deliverance without Writ; and the Defendant sued a *Recordare* to the Sheriff of *Berks* *quod distrinxerit in Feodo, &c.* and at the Day the Plaintiff came, but the Defendant made Default. And it was adjudged, (1.) That the Plaintiff was well removed, altho' the Taking was in another County. (2.) That Process of Outlawry does not lie in this Case on the Defendant's Default, as it is does in Replevin. (3.) That yet, if he comes in by Process of Outlawry, he shall be forced to Answer. (4.) That he may avow for Damage feasant, notwithstanding the special Cause assigned. *Note*; The Beasts here were driven into the County of *Berks*. Dyer 168

Note; The Words (*ut dicitur*) are to be in the Writ when brought by a common Person only, and not when brought by the King. 38 *Ed. 3.* 31.

(b) If the Cause be removed by Plea out of the Lord's Court (it seems of Ancient Demesne) the Cause is traversable; *contra*, if it be out of the King's Court. 12 *H. 4.* 12. and 31 *Ed. 3.* *Fitz. Cause de remover* 10. and though there be no Cause, yet the Parol shall not be remanded; *contra*, if in Ancient Demesne. 12 *H. 4.* 14. For on a *Recordare* out of Ancient Demesne, the Plea arises wholly on the Cause, and therefore the Plaintiff may be Nonsuit in such *Recordare*; but if it be out of any other Court, the Plea arises upon the mere Matter, and therefore the Plaintiff cannot be nonsuited there. *Kelw.* 115.

And

And if a Replevy be sued by Plaintiff in the Court of any other Lord, than in the County Court before the Sheriff, then the *Recordare* which is sued by the Plaintiff or Defendant shall be directed unto the Sheriff; and the Writ shall be such:

The King to the Sheriff of Lincolnshire, greeting: We command you, that having taken with you four discreet and lawful Knights of your County, you go in your own Person to the Court of W. of C. and in that full Court you cause to be recorded the Plaint which is in the same Court without our Writ between, &c. and have that Record under your Seal and the Seals (a) of four lawful Men of the same Court who were present at that Record, &c. and to the Parties, &c. as above. Because the aforesaid A. is the Bailiff of the aforesaid W. of C. of his Court aforesaid, and holds the Pleas of the same Court, and ought not to be a Judge in his own Cause. 10 Ed. 3. 42.

Another *Recordare* thus: *You go to our Wapentake of H. or thus, To our Hundred of I. or thus, To our Tithing of L. and in that full Wapentake; or thus, in that full Hundred; or thus, in that full Tithing, &c. and he may shew other Causes, as the Case requireth. And if the Recordare be returnable in the Common Pleas, and at the Day of the Return the Sheriff return it * tarde; now the Party that sued that Recordare shall have a Sicut alias recordare out of the Common Pleas directed unto the Sheriff, &c.* 10 Ed. 3. 42.

A (b) And if the Plea be discontinued in the County, yet the Plaintiff or Defendant may remove the Plaint into the Common Pleas or King's Bench by *Recordare, &c.* and it shall be good, and he shall declare upon the same; and the Court shall hold Plea upon the same Plaint; for if the Plaint be (c) continued in the County, and Issue joined upon it, yet nothing shall be removed but only the Plaint; and in the Common Pleas the Plaintiff may declare anew, &c.

B And in a *Recordare* to remove a Record out of Ancient Demesne the Writ shall say, *Plaint and Process*, and not *Record*; *quod vide* 39 H. 6. by all the Justices; yet the Form of the Register in the Record, as before is said, is, *And have that Record.*

the Record in Bank shall be in the Franchise. 9 H. 6. 58. Oyer and Terminer shall not be removed by *Recordare*, by Babington. 1 R. 3. 4. acc. Vide 5 Ed. 6. fo. 91. 34 H. 6. 27. Ashton cont', upon a Fine removed; and 22 H. 6. 7.

(a) And Note; A Record not being received at the *Distringas Seſſatores* by Attorney, was afterwards received by the Suitors on a Writ out of Chancery. 29 Ed. 3. 36.

(b) See accordant 3 H. 6. 30. and the like in a *Pone*. 13 Ed. 3. *Replevin* 37. 14 Ed. 3. F. Brief 278.

(c) And therefore if the Defendant be named without any Addition in the Plaint, he shall have no Addition in the *Recordare*, though *Process* of Outlawry lies thereon. 2 H. 5. 6. (30 H. 6.

30. accordant) adjudged. For the Plea here is not held on a Writ (but a Plaint only) and so not within the Intent of the Statute.

Note; A *Capias* lies on a Default in a *Pone* for the Plaintiff in a Replevin by Plaintiff, but not on a Default upon a *Judicium*. 3 H. 6. 54. See 14 H. 6. 21. Yet if a *Witbernam* be awarded in a County, the Plaintiff shall gage Deliverance here. And a *Recordare* makes the Court Judge of the whole Matter. 21 H. 6. 40. See 39 H. 6. *Recordare* 5. 20 Ed. 3. *Recordare* 10, 20.

Recaption.

If a Record be removed out of a Court of Record by a *Recordare facias*, C it cometh in without Warranty, and the (*) Court shall not hold Plea thereof. But if a Record cometh in Court without a Warrant, the Party may sue a Writ directed unto the Justices, that they proceed upon that Record *quod coram vobis residet*. If the *Recordare facias* bear Date before the Plaint were entered in the County, yet the Record is well removed, because that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by such Writ which beareth Date before the Entry of the Plaint, it is not good. D

Recaption.

A Writ of (a) Recaption lieth where a Man distraineth for Rent or Service, E or other Things, and afterwards, pendent the Plea, he who distrained doth distrain again for the same Rent or Service, or other Thing, the Beasts of the Party whom he had before distrained upon; then he who is so distrained shall have this Writ, and shall recover Damages for the second Distress taken; and he who took the Distress shall be fined for the Wrong, although the first Distress were lawfully taken, and although that the Rent or Services for which he distraineth were Arrear, &c. because by the first Distress he shall have Return of the Things taken, until he hath the Rent or Services for which he distrained. But for Damage-feasant in his Lands, a Man may distrain the Beasts of any Man which he finds upon the Land during the Damage, so often as he shall find them so doing, because he distraineth them every Time for a new Trespas and new Wrong done in his Land. *Tamen quære*.

47 Ed. 3. 7.
Finchd. cont.

And if the Lord distrain for Rent or Services behind, and afterwards, pendent the Plea, the Lord doth command his Servant to distrain for the same Rent or Service, by reason whereof the Servant or Bailiff do distrain again; the Tenant shall have a Writ of Recaption against the Lord for the same Distress. F

And so it seemeth, if the Lord distrain his Tenant for Rent or Service, and afterwards the Servant or Bailiff do distrain the Tenant again for the same

(*) See 9 H. 6. 58, 59, accordant (*sed* 34 H. 6. 42, *contra*) where by a *Recordare* the Record was removed by the Sheriff out of the Chancellor of *Canterbury's* Court; but it is there said, that the Court of *Cant'* might have refused to obey the Writ, for being a Court of Record by Commission, the Plea ought not to be removed by a *Recordare*, but by a *Corpus cum causa*, or a *Certiorari*. And it was held, that seeing the Plea was held in this Court without Warrant, the whole Proceedings were void, and therefore the Court could not remand it; for the Record was never brought in here, but always remained at *Cant'*, and so all was discontinued.

Yet see the *Register*, page 6, 7. A *Recordare* on a foreign Voucher out of *Chester*. A *Recordare* was to remove a Plea in *Curia nostra*, where it was in *Cur' Regine Mar'*; and ruled that the Plea was not removed. *Trin. 3 Eliz. Mo. 78, 130.* See alio *Nat. Br. 12. 12 H. 4. 13. 7 Ed. 4. 23. 1 R. 3. 4.*

(a) Note 11 H. 6. 14. If the Plaintiff in a Recaption be Nonfuit, the Defendant shall have a Return (of the Beasts, &c.) and therefore in this Case the Plaintiff's own Counsel alledged Death of the Plaintiff, after the last Continuance, in order to abate the Writ, and so to prevent a Nonfuit. 11 H. 6. 14.

Rent or Service, and the Lord do agree unto that Distress, by joining in Aid Prayer of the Servant or Bailiff, the Tenant shall have a Writ of Recaption against the Lord. But if the Lord distrain for Rent or Service, and afterwards the Lord's Bailiff doth distrain the same Tenant for the same Rent or Service, pending the Plea; the Tenant shall not have a Recaption against the Lord, nor against the Bailiff, although the Bailiff maketh Conuſance in the Right of the Lord, &c. For it may be that the Lord had not Notice of that Distress, or that the Bailiff had not Notice of that Distress which the Lord took before for the same Rent or Service.

G But it seemeth in that Case the Tenant may have an Action of Trespass against the Bailiff for the second Distress of his Cattle for the same Rent or Service for which the Lord had distrained before. 10 Ed. 3. pl. 13.

H But if the Lord do distrain for Rent or Services, and afterwards (pendent the Plea) the Lord do distrain the Cattle of a Stranger for the same Rent, and not his Cattle who was first distrained; he who is so distrained shall not have a Writ of Recaption, nor he who was first distrained. For it behoveth him who shall have this Writ of Recaption, that he have his Cattle first distrained before for the same Cause for which they were distrained the second Time. 12 Ed. 2. p. 13.

I But if a Man distrain two Mens Cattle for Rent or Service, and afterwards he doth distrain the Cattle of one of them again for the same Rent or Service; now he shall have a Recaption alone in his own Name. 34 Ed. 2. p. 12.

K And if the Lord distrain the Beasts of a Stranger for Rent or Service, and afterwards (pendent the Plea) the Lord doth distrain the Beasts of the same Stranger for the same Rent or Service; the Stranger shall have a Recaption as well as the Tenant, if the Beasts were taken at two several Times. Post. G.

L And if the Writ of Replevin be abated, then the Writ of Recaption shall abate, as it was judged in the Time of King Ed. 1.

M And if the Lord do distrain for Rent Arrear at a certain Day his Tenant's Cattle, and he sueth a Replevin, &c. and the Lord avow for the Rent, &c. and the Tenant plead (a) *Hors de son Fee*; if the Lord (pendent that Plea) distrain for Rent behind at another Day after, the Tenant shall have a Writ of Recaption, because the Lord's Title shall be tried by the first Plea. But otherwise it is, if the Tenant in the first Replevy plead *Riens arriere*, or Levied by Distress, then (pendent that Plea) the Lord may distrain for the Rent behind at a Day after, because that the Seigniori is there confessed, and the Tenant shall not have a Recaption (b). [72.]

(a) In this Case he shall not have Advantage of the Issue *Hors de son Fee*, before that the Issue be tried; and therefore he avers, that the first Taking was (wholly) for the same Rent. 28 Ed. 3. 29. per Cur^o; yet see this Point agreed with a Diversity. per Cur^o. 7 H. 4. 4. and 9 H. 5. 1. per Harl^o. See also 7 H. 4. 4. 18 Ed. 2. p. 8.

(b) The Defendant in Replevin, before the Sheriff, avows for Rent, the Plaintiff is removed by *Pone*, and the Defendant distrains for the same Cause, and a Recaption was brought, tho' only a Plaintiff of Record; and it is there agreed, that a Recaption lies before Avowry made. 9 H. 6. 1. 11 H. 6. 8. adjudged. (*Quare* 45 Ed. 3. 4.)

47 Ed. 3. 7. And the Tenant or he who is distrained, shall have a Recaption before any A Avowry made, and may aver he distrained for the same Cause (a).

47 Ed. 3. 7. And in a Recaption the Defendant shall not avow, as he shall do in a Re- B
9 H. 6. 4. plevin, but shall justify the Taking, &c. as he shall do in an Action of Trespass, for the Plaintiff shall recover Damages only in the Recaption for the (b) Contempt that the Defendant hath done against the Law, and not for the Taking of the Cattle, nor for the Detaining of them. And in a Recap- C
tion it is not material whether the first Distress be of Right or not.

And if a Pleint be removed out of the County into the Common Pleas by D
Pone or Recordare, and afterwards the Plaintiff be Nonfuit in the Common
31 Ed. 3. 5. Pleas, before or after an Avowry made, the Lord after this Nonfuit may distrain again for the same Cause, and the Tenant shall not have a Recaption, because there is not any Plea depending; and yet the Plaintiff may sue a Writ of (c) second Deliverance upon the same Record.

And if the Lord distrain the Cattle of the Tenant and a Stranger, which E
they have in Common, for Rent or Service, and afterwards (pendent the Plea) the Lord doth distrain the Tenant's Cattle only for the same Cause; the Tenant shall have a Recaption for those Cattle. But if the Lord distrain the Cattle of the Tenant only for Rent, &c. and afterwards (pendent the Plea) the Lord doth distrain the Cattle of the Tenant and a Stranger, which they hold in Common, for the same Cause; it seemeth that the Tenant shall not have Recaption for those Cattle for the Interest of the Stranger. *Quere.*

14 Ed. 3. And if the Lord distrain and the Tenant sue a Replevin, which is removed F
Recap. pl. 7. into the Common Pleas, and the Conufance is demanded by the Bailiff of the Freehold, and is granted, and afterwards the Bailiff fail to do Right unto the Party; if he distrain again for the same Cause, the Tenant shall have a Recaption, because the Lord ought to remove the Plea into the Common Pleas again by Resummons, &c.

Ant. K. And a Recaption lieth where the Lord distraineth other Cattle of the G
Tenant than he first distrained, as well as if he had distrained the same Cattle again, if it be for one and the same Cause, as I conceive. And yet in 19 Ed. 3. the Issue was taken upon the Property of the Cattle, as that they were other Cattle of the Plaintiff, &c.

And a Recaption lieth as well where the Lord distraineth the Tenant again for the same Cause, where the Plea is depending in the County before the Sheriff, as where the Plea is depending before Justices of Record.

And if the Plea be depending in the County before the Sheriff, then the H
Form of the Writ of Recaption is,

(a) And see 28 Ed. 3. 92. That where the Lord in a Replevin avows for one Cause, and justifies the Recaption for another Cause, the Plaintiff may aver that the first Caption was made by him for the same Cause (as the second.) See 45 Ed. 3. 4. 32 Ed. 3. p. 5. 9 H. 6. 7.

(b) Note the Defence; viz. *Defendit vim & injuriam quando, &c. & quicquid est in Contempti Domini Regis & ejus Mandatum.* 29 Ed. 3. 28.

(c) Note; Second Deliverance does not lie in a Franchise which has Conufance. 38 Ed. 3. 31.

The King to the Sheriff, &c. A. hath shewed to us, that whereas you had replevied to the same A. without our Writ his Cattle which B. took and unjustly detained, and had given Day until at your next County, and had attached the aforesaid B. to answer hereupon to the aforesaid A. he the said B. after that Attachment, again took the Cattle of the aforesaid A. upon the same Occasion that he before took them, and detains them as before. And because this is unjust, and manifestly (a) against our Peace, we command you, that without Delay you cause the Cattle of the aforesaid A. to be delivered, until the chief Plea between them be determined. And if you shall find that the aforesaid B. again took the Cattle of the aforesaid A. upon the same Occasion that he before took them, and detains them as before, then have the Body of the aforesaid B. before you and the Keepers of the Pleas of our Crown at your next County. And if by your Bailiffs by whom the Cattle of the aforesaid A. were replevied, and by other honest and lawful Men of your County, he can be convicted of a second Taking for one and the same Occasion, then so chastise him the said B. by Amercement, that that Chastisement may make others afraid of offending in the like Case.

And if the Plaint be in the County by Writ of Replevin pending before the Sheriff, then the Writ is such:

The King to the Sheriff of S. greeting: A. hath shewed unto us, that whereas he lately brought to you our Writ of replevying to him his Cattle which B. took and unjustly detains, and you have replevied those Cattle to him the said A. and given to him Day until at your next County, &c. as in the Writ before. And if the Plaint be removed out of the County by Recordare, then the Form of the Writ of Recaption shall be such:

The King to the Sheriff, &c. A. hath shewed unto us, that whereas B. had taken and unjustly detained the Cattle of the aforesaid A. and you upon the Complaint of him the said A. as the Custom is, had replevied those Cattle to the same A. and given to him Day until at your next County, and had attached the aforesaid B. to answer upon this to the aforesaid A. and afterwards we commanded you, that you should have the Record of the Plaint aforesaid before our Justices at Westminster such a Day last past; the same B. pending the Plea before the said Justices, hath again taken the Cattle aforesaid, &c. as above. 29 Ed. 3. 28.

And if the Plaint be removed out of the County by a Pone into the Common Pleas, then the Writ of Recaption is such:

The King to the Sheriff, &c. A. hath shewed unto us, that whereas he had lately brought to you our Writ of replevying to him his Cattle which B. took and unjustly detains, and you had replevied those Cattle to the same A. and given him Day until at your next County, and you had attached the aforesaid B. to answer upon this to the aforesaid A. and afterwards we commanded that Plaint to be put before our Justices at Westminster such a Day last past; the same B. pending the Plea before the same Justices, again took the Cattle of the aforesaid A. upon the same Occasion which he before took them, and detains them as before, and doth not permit Justice to be done, in Contempt of our Commands. And because this is unjust and manifestly against our Peace, we command you, that if the aforesaid A. shall

(a) And Note; The Writ shall be *contra Pacem nostram*, although against the Lord, but not *Vi & Armis*. See 9 H. 6. 1. 3: Ed. 3. Recapt. 5.

[73.] *make you secure touching the prosecuting his Claim, &c. then put by Gages, &c. the aforesaid B. that he be before our Justices aforesaid to answer to us concerning the Contempt aforesaid, and to the aforesaid A. of the Trespas aforesaid: And have you there the Names of the Pledges and this Writ, and cause these Cattle to be replevied to the same A. Witress, &c.*

If a Man sue a Replevin by Writ, and the Sheriff fend unto the Bailiff of A the Liberty to replevy the Cattle, because that the Taking was within the Liberty, and afterwards the Plaint is removed by *Pene* into the Common Pleas, and afterwards the Lord, or the Party who distrained before, distrain again for the same Cause; then he who is so distrained shall have a Writ of Recaption, and the Writ shall be such:

The King to the Sheriff, &c. S. hath shewed unto us, that whereas he lately brought to you our Writ of replevying to him his certain Horse which J. and A. have taken and unjustly detained, and the Bailiffs of the Liberty of the Abbot of R. of C. (whom you have made to have the Return of our Writ aforesaid) replevied that Horse to the same S. and attached the aforesaid A. and J. to answer hereupon to the aforesaid S. and afterwards we commanded that Plaint to be put before our Justices at Westminster such a Day in the third Year of our Reign; the aforesaid J. and A. have again taken the Cattle of the aforesaid S. pending the Plea aforesaid before the Bailiffs of the aforesaid Abbot of his Court aforesaid, before whom that Plaint, according to the Liberties granted to the same Abbot by the same Justices, is returned to be pleaded, &c. as above.

And if a Lord hath a Hundred or a Wapentake, and hath Power to hold B Plea of *unlawful Distress*, &c. and a Man distraineth another there, for which he sueth a Replevin within the Hundred, and pendent the Plea there, the Party who distrained before distrained the same Man again for the same Cause; then he who is so distrained shall have a Writ of Recaption in such Form, directed unto the Sheriff.

The King to the Sheriff, &c. A. hath shewed unto us, that whereas B. had taken and unjustly detained the Cattle of the aforesaid A. and the Bailiffs of M. of N. upon the Complaint of the said A. (as the Custom is) had replevied these Cattle to the same A. and given to him Day until at the next Wapentake of their aforesaid Lord of N. and had attached the aforesaid B. to answer to the aforesaid A. upon this, and afterwards we commanded you, that having taken with you, &c. you should go to the aforesaid Wapentake, and in full Wapentake, &c. without our Writ between him the said A. and the aforesaid B. of the aforesaid Cattle of him the said A. taken, &c. and that Record, &c. the same B. pending the Plea, &c. on the same Occasion on which they were first taken, &c. put, &c. as before in the Writ of Recaption.

And now it appeareth by these Writs of Recaption, that if a Man be C distrained, and he sue a Replevin by Plaint before the Sheriff in the County, and afterwards hanging that Plaint he is distrained again for the same Cause, that he shall have a Writ of Recaption, which shall be directed to the Sheriff, and the Sheriff shall hold Plea upon that Writ of Recaption.

But if a Man be distrained within any Liberty, and he sue a Replevin there by Plaint, or by Writ, and pendent that Plaint in the Liberty he be distrained again for the same Cause by the Person who distrained before; he shall not have upon that Distress a Writ of Recaption, because the Plaint is not pendent before

before the Sheriff, nor before the Justices, and the King will not direct the Writ of Recaption but unto the Sheriff. But if the Plaint were removed by *Pone* or *Recordare* out of the Liberty before the Justices, then the Party who was distrained shall have Recaption, as well for the Distress which was before the Writ of *Pone* or *Recordare*, as if the Re-taking had been after the *Pone* or *Recordare* sued forth.

- D And if a Man be convicted before the Sheriff in a Writ of Recaption, *&c.* 39 Ed. 3. 36. he shall be amerced, and render Damages unto the Party for the Contempt. But if he be convicted before the Justices in a Writ of Recaption, he shall be fined, and not amerced, and also shall render Damages unto the Party for the Contempt.

Writ de Withernam.

- E THIS Writ lieth where a Man taketh the (a) Cattle or Goods of another Man, and the Party sueth a Replevin by Writ, and an *Alias* and *Pluries*, and upon the *Pluries* the Sheriff doth return, that the Cattle or Goods, *&c.* are esloined, *&c.* by reason whereof he could not replevy them, *&c.* then this Writ of Withernam shall issue (b) out of that Court where the *Pluries* is returned, returnable in the King's Bench (b) or Common Pleas: And the Form of the Writ is such: See 2 Salk. 581, &c. 2 Shower 221 to 230. Farell. 9, 17. Raym. Ant. 68.

- F *The King to the Sheriff of Lincolnshire, greeting: Whereas we have many Times commanded you that justly, &c. to A. his Cattle which B. &c. or signify the Cause, &c. wherefore you would not or could not execute our Command many Times directed to you thereupon; and you have signified to us, that after the aforesaid B. took the Cattle of the aforesaid A. he drove them in your County, and from the County aforesaid into the County of B. wherefore you could not replevy them to the same A. We being willing to oppose the Malice of him the said B. in this Behalf, command you, that you take the Cattle of the aforesaid B. in your Bailiwick in Withernam, and detain them (c) until you can replevy to the same A. his Cattle aforesaid according to the Law and Custom of our Kingdom, according to the Tenor of our Commands aforesaid before to you, &c.*

- G And in the Writ of *Withernam* he ought to rehearse the Cause which the Sheriff returneth for which he cannot replevy them; as to say,
And after the aforesaid B. took those Cattle or Beasts, he esloined those Cattle or Beasts, or that Ox or Horse, out of your Bailiwick, so that you could make no

(a) Note; It lies not on a Suggestion only, that the Beasts are esloined. 11 H. 6. 1. *per Cotton.*

(b) But not out of Chancery. M. 42, 43 *Eliz. inter Grindal and Poundal*, in C. B. And yet if *Elongata* be returned on the *Alias*, *&c.* into Chancery then the *Withernam*, shall issue out of Chancery. 22 H. 6. 21. *per Brown.*

(c) It seems the Defendant shall have a Day in this Writ, (if he comes in) by Attachment, but not otherwise. See 7 H. 4. 27. 43 Ed. 3. 26. 35 H. 6. 47. as if *Elongata* be returned

on the *Pluries* Replevin, then there is this Clause inserted in this Writ. *Et si the Plaintiff fecerit, &c. tunc pone the Defendant, &c. ad respondend' tam Domino Regi de contemptu quam prefato Querenti de captione & injusta attentione Cattelorum predictorum.* 2 *Eliz.* 180. For it seems there had not been any such Clause in the *Withernam*, if it had been on a Plaint in the County. *Vide ibid. & 44 Aff. 15.* But then the whole ought to be removed by the *Pone*, and a special Return thereof, *viz. Quod nullum aliud Breve est, &c.*

Delivery thereof to the same A. as you have signified to us: We, &c. command you, that without Delay you take Cattle or Beasts, &c. as the Case is, in your Bailiwick to the Value of the Cattle, &c. of the aforesaid A. in Withernam, and detain them until you can replevy to the same A. &c.

[74.]
Ant 69.

And there are very many Causes that the Sheriff may return upon the *Pluries*, wherefore he cannot replevy them, whereof divers of them do appear in the Register, which a Man may there see.

And if the Sheriff do return upon the *Pluries repleg'*, that he hath sent A unto the Bailiff of the Liberty who hath Return of Writs, &c. and that the Bailiff hath given Answer, that he cannot execute the Writ, because he cannot have a View of the Cattle or Goods which were taken; then the Court in which such Return is made shall award a Writ of *Withernam* directed unto the Sheriff, and the Sheriff shall thereupon make his Precept unto the Bailiff of the Liberty; and if the Bailiff of the Liberty doth not make a Return thereof unto the Sheriff, then the Sheriff shall return the whole Matter in Court, and thereupon the Court shall award a Writ of (a) *Withernam* and a *Non omittas* with the same: And the Form of the Writ shall be such:

The King to the Sheriff of B. greeting: Whereas we have many Times commanded you, &c. (until) or could not execute our Command many Times directed to you thereupon, and R. of C. Bailiff of the Liberty of Saint Walric, whom you have made to have the Return of our Writ, hath answered you, that he could not do Execution of that Writ, because he could not have a View of the Cattle aforesaid, as you have signified to us; wherefore we commanded you, that without Delay you should take the Cattle of the aforesaid B. in your Bailiwick in Withernam, and detain them until you could replevy to the same A. his Cattle, &c. according to the Tenor of our Commands, &c. thereupon to you directed, or should signify to us the Cause, &c. why you could not, &c. And you have returned to us, that the same R. Bailiff of the Liberty aforesaid, whom you have made to have the Return,

(a) See 11 H. 4. 10. In Replevin a *Withernam* was awarded against the Defendant, after which the Defendant claims Property, and thereon Issue taken, the Plaintiff gages Deliverance, and a Writ issues to make Deliverance; the Sheriff returns *Elongata*, and so a *Withernam* was awarded against the Plaintiff, and on *Nilil* returned, a *Capias* issued; then the Issue is found for the Plaintiff, on which he has Judgment; and then on a *Pluries* returned, the Defendant prayed, and had an Exigent against the Plaintiff; and by *Tyrabit*, the Defendant shall recover Damages against the Plaintiff for this Deteiner. *Quere 1 Co. 75.*

Note; The Writ of *Withernam* is *ad respond' Domino Regi de Contempt' & parti de Damno & injur'*. R. Entr. 701. See 35 H. 6. 47. *Danby and Moyle*. The Defendant shall recover Damages in *Withernam* on *Elongata* returned, in a Writ de *Return' habend'*; but others *contra*. See *Dyer* 41. If the Plaintiff be *Nonfuit*, he may have a second Deliverance *instanter*, and it shall

be a *Superfedeas* to the *Return' habend'*; and if a *Return' habend'* be sued after a second Deliverance granted, the Sheriff ought not to execute the second Deliverance. Note; This prevents the Mischief of a *Withernam* against the Plaintiff.

N. B. A. brings Replevin against *B.* and has Deliverance, and is afterwards *Nonfuit*, and a Return awarded, and because an *Elongata* was returned, *B.* had the Beasts of *A.* in *Withernam*; in this Case though the Plea was in the County, the Replevin is made in *C. B.* and the second Deliverance shall not be of the Beasts delivered in *Withernam*, but of those that were first taken; and the Defendant shall be forced to gage Deliverance of those taken in *Withernam*, (*quod Nota*;) and yet the Plaintiff himself is possessed of the Beasts for which he complained, and if he makes his Plea or Count of the Beasts delivered in *Withernam*, it is not good. 25 Ed. 3. 47. 33 Ed. 3. *Avowry* 256. and 13 Ed. 3. *Replev.* 37. *per Cur'*. See also *Dyer* 59. accord. *per Cur'* in a second Deliverance.

&c.

&c. hath given you no Answer thereupon. We command you, that you do not omit because of the Liberty aforesaid, but that you enter into it, and take, &c. in Withernam, until, &c. according to, &c. before to you, &c. Witnesses, &c.

B And if a Man distrain any Man's Cattle, and he sue a Replevin by Plaint made unto the Sheriff, for which the Sheriff makes a Precept unto the Bailiff to replevy them, and the Bailiff return at the next County, that he cannot replevy the Cattle, because they are esloined, or that he cannot have View of the Cattle; then the Sheriff in the same County Court ought to make Inquiry if it be true which is returned, and if it be found so by the Jury, then the Sheriff *ex Officio* shall make a Precept unto his Bailiffs in the Nature of a *Withernam*, to take as many Cattle of the other Party: And if the Sheriff make such Precept to take the other's Cattle in *Withernam*, and the Bailiff will not execute the Writ, then the Party may have a special Writ out of the Chancery directed unto the Sheriff, commanding him to do *Withernam*, and to do Execution of the first Judgment. And the Writ shall be such:

The King to the Sheriff, &c. A. hath shewed unto us, that B. and C. had unjustly taken and detained the Cattle of the aforesaid A. and the same A. prosecuted before you for replevying to him the Cattle aforesaid according to the Law and Custom of our Kingdom; and although it was testified by I. your Bailiff, whom you sent to replevy the Cattle aforesaid of the said A. and found by an Inquisition made in your full County, (as the Custom is) that the same Bailiff could not have a View of the same Cattle to replevy them to the aforesaid A. wherefore it was considered in your full County, that the Cattle of the aforesaid B. and C. in your Bailiwick should be taken in Withernam, and detained until his Cattle aforesaid could be replevied to him the said A. according to the Law and Custom of our Kingdom; yet the same A. hath not yet obtained Execution of the Consideration aforesaid, to the no little Damage and Grievance of him the said A. And because we are willing to relieve the aforesaid A. in this Matter, we command you if it be so, that you take the Cattle of the aforesaid B. and C. in Withernam, and detain them until you can replevy to the same A. his Cattle (a) aforesaid according to the Law and Custom of our Kingdom of England, and according to the Consideration aforesaid, &c.

C And by that it appeareth, that the Sheriff may award *Withernam*, or Replevin sued by Plaint, if it be found by Inquest in the County, that the Cattle are esloined according to the Bailiff's Return, &c. But upon the *Withernam* 9 Ed. 4. 48. awarded in the County, if the Bailiff do return, that the other Party hath not any Thing, &c. he shall have an *Alias* and a *Pluries*, and so infinite, and hath no other Remedy there.

D But upon a *Withernam* returned in the King's Bench or Common Pleas, if the Sheriff do return, that the Party hath (b) not any Thing, &c. there a *Capias* shall be awarded against him, and Exigent, and Procefs of Utlagary. 20 Ed. 4. 11.

In a Replevin sued by Writ, at the *Pluries* returnable the Sheriff doth return, *Quod Averia elongata sunt, &c.* Now if the Defendant appear, the Plaintiff shall not have a *Withernam*, because the Defendant may gage Deli-

(a) *Vide ante* 69. 2 H. 4. 9. 22 H. 6. 40. 9 Ed. 4. 8. 16 H. 7. 2.

(b) See 28 Ed. 3. 57. and a *Sicut alias* there granted.

verance. And if the Defendant's Cattle be taken in *Withernam*, they shall (a) not be delivered to the Plaintiff, but the Sheriff shall keep them *quousque*, &c. and the same appeareth by the Words of the Writ: But it is said, that it is the Usage in the King's Bench, that they shall be delivered unto the Plaintiff; by which it seemeth, that the Form of the Writ of *Withernam* there is in another Manner than it is in the Register.

Note the last Case, 13 H. 7. the Defendant at the Exigent after the *Withernam*.

(b) In a Replevin, at the *Pluries* returnable the Sheriff doth return, *Quod Averia elongata sunt*, &c. and the Defendant doth appear, and pleadeth that he did not distrain them: Now the Plaintiff shall not have *Withernam*. And so if the Defendant at the *Pluries* returned appear, and plead that the Cattle are dead, in the Default of the Plaintiff, the Plaintiff shall not have *Withernam*. *Bro. Vouch. cap. 7.*

And the Defendant in some Cases shall have a *Withernam* against the Plaintiff: As, if the Defendant hath a Return awarded for him, and he sueth a Writ *de Retorno habendo*, and the Sheriff return upon the *Pluries*, *Quod Averia elongata sunt*, &c. he shall have a *Scire facias* against the Pledges, &c. according unto the Statute of *West. 2.* and if they have nothing, then he shall have *Withernam* against the Plaintiff of the Plaintiff's Cattle. *Quod vide Trin. 7 R. 2. (c).*

Moderata Misericordia.

[75.]
14 H. 4. 4.

THE Writ of *Moderata (d) Misericordia* lieth in Case where a Man is amerced in a Court Baron, or other Court which is not a Court of Record, outrageously for Trespas or other Offence; then he may sue this Writ

(a) See the like Diversity, 2 H. 4. 9. Yet *Quare R. Entr. 702* and *704.* that the Clause of the *Withernam*, whether for the Plaintiff, or the Defendant, is *Quod Vic' capiat in Withernam*, &c. & ea prefato A. deliberare, &c. detinend' quousque, &c. See for this, 25 Ed. 3. 4. 7. but more fully in *Gage Deliverance 8.* where the Sheriff in his County levied Goods of the Plaintiff in *Withernam*, after a Return by him awarded; on a Nonsuit, if he does not deliver them to the Defendant, the Plaintiff shall have an Action against the Sheriff. See 1 Co. 75. b. in his Entry of *Breedon's Case accordant.*

(b) Note; If in a Replevin a *Withernam* be awarded, and afterwards the Defendant avows the taking as his own Goods, or for Heriot, or denies the Caption, the Plaintiff shall gage Deliverance of the *Withernam*, but the Defendant shall not gage Deliverance of the Goods taken, and yet the Defendant might have come

in *Pais* and claimed Property. 30 Ed. 3. 9. acc. So if *Withernam* be taken, and after Defendant comes into Court, and makes Conufance as Bailiff to I. S. and prays Aid of him who joins in Aid, the Defendant shall have Deliverance of the Beasts in *Withernam*; for it belongs to the Lord to make this Deliverance of the Beasts in *Withernam*, and not to his Bailiff; per *Horton. 7 H. 4. 28.*

(c) See 5 H. 5. 7. by *Hull*, the Avowant may have *Withernam* notwithstanding, for it was at Common Law. N. B. 7 R. 2. — That it lay not before a *Scire facias* returned. See 9 H. 6. 42. 5 H. 4. 71. 13 H. 7. 2.

(d) See *Rot. Claus. 38 H. 3. M. 7.* A Writ to the Sheriff, *De non permittendo ad Distringend' pro Misericordia contra Tenorem Mag' Chartæ.*

directed

directed unto the Lord of the Court or unto his Bailiffs, commanding them, that they moderately amerce the Party according unto the Quantity of the Trespafs, &c. And this Writ is founded upon the Statute of *Magna Charta*, cap. 14. *Quod nullus liber Homo amercietur nisi secundum quantitatem Delicti*, &c. And the Procefs upon this Writ is *Alias* and *Pluries*, and Attachment, and the Attachment shall be awarded against him against whom the original Writ was sued; and the Form of the Writ is such:

B *The King to the Bailiff of I. of S. greeting: C. hath shewed unto us, that whereas he was lately amerced in the Court of your aforesaid Lord of I. for a small Fault into which he fell; you require from him a grievous Ransom contrary to the Tenor of the Great Charter of the Liberties of England, wherein is contained, That no Freeman shall be amerced but according to the Greatness of his Fault, and this, saving to him his Contenement, and saving to Villains their Wainage: And therefore we command you, that you take a moderate Amercement from the said C. according to the Measure of his Fault, that no repeated Clamour thereupon may come to us. Witness, &c.*

And the Attachment shall be always directed unto the Sheriff, and the Writ shall be such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon B. and C. Bailiffs of D. of I. that they be before our Justices at Westminster, &c. to shew wherefore, seeing that the same A. was lately amerced in the Hundred or Court of their said Lord of I. for a small Fault into which he fell; and we, at the Request of him the said A. commanded the said Bailiffs, that according to the Tenor of the Great Charter of the Liberties of England, they should take from him a moderate Amercement according to the Greatness and Measure of his Fault; they the same Bailiffs having despised our aforesaid Commands, have not ceased to extort from the said A. a more grievous Ransom thereupon by various Distresses, in Contempt of us, and to the great Damage of him the said A. and contrary to the Tenor of the Great Charter aforesaid, as it is said: And have you there the Summoners, &c. Witness, &c.

C And if a Man be amerced in a Court Baron, where he did not any Trespafs, but it is so presented by the Inquest, &c. yet it seemeth he shall not have this Writ, if the Amercement be not outrageous: But if the Steward of his own Head will amerce any Tenant or other Party without Cause, I conceive the Party shall have an Action of Trespafs, if he be distrained for that Amercement, and the Party ought not for to sue his Writ of *Moderata Misericordia*.

D If a Feme Covert be amerced for Trespafs, &c. if the Husband be distrained for the same, he shall have this Writ, if the Amercement be outrageous

E But what shall be said moderate Amercement, and what not, appeareth by the Words of the said Statute, which saith, *Secundum quantitatem Delicti*: By which it seemeth, that if it exceed the Value of the Trespafs, it is not a moderate Amercement; and that shall be intended for the Value of the Trespafs, which is done unto the Lord, and not to him who shall have the Amercement: For if one Tenant do Trespafs unto another Tenant, he shall be therefore amerced in the Lord's Court by Presentment of the Trespafs; but that Amercement shall not be unto the Value of the Damages which is done unto
the

the Tenant, but having Regard unto the Wrong and Offence done unto the Lord for the Wrongs done unto his Tenant.

And if a Man be Nonfuit in a Court Baron, he shall be amerced, and if F it be outrageous, he shall have this Writ of *Moderata Misericordia*: And so shall the Defendant if he be amerced in any Suit brought against him, because it is found against him; or that he makes Default to wage his Law at the Day given him in any Plaint sued against him, &c. And if the Amercement be not moderate, he shall have this Writ of *Moderata Misericordia*, &c.

In a Court Baron, if two be amerced for one Trespass outrageously, they G shall not join in a *Moderata Misericordia*, for they shall be severally amerced, although the Trespass be jointly done. And so is it in a Plaint sued by two, if they be Nonfuit, the Amercements shall be several, and they shall not join in *Moderata Misericordia*; yet if an Amercement be set jointly upon them, then they shall join in the Writ. But it seemeth this Amercement ought to be assented by Persons certain, when they are amerced for any Trespass. And if the Amercement which is set be assented by his Peers, then this Writ of *Moderata Misericordia* doth not lie; for then it is according unto the Statute of *Mag' Char'*, *quod vid.* 10 Ed. 2. in Title of Actions upon the Statute in the Abridgment.

Post. 76. D.
Kitchen 44.

And it is called *Misericordia*, in English *Mercy*, for the Smallness thereof, H by which it seemeth it ought to be less than the Offence: And then it seemeth they shall be severally amerced for a joint Offence, because one shall not be charged for the Offence of another; but they shall equally bear the Charge, and pay the Sum assessed.

And in the Common Pleas, the Course is, when there are divers Defend- I ants, to make several Estreats of the Amercements, and to deliver them unto the Clerk of the Assise, and he shall deliver them unto the Coroners, and they use to *affere* the Amercements severally.

10 H. 6. 7.
7 H. 6. 12.

And if divers Demandants be amerced in a real Action for their Nonsuit, K they make the Estreats severally upon them, and deliver them as before unto the Clerk of the Assise, who delivereth them over unto the Coroners to *affere* the Amercements.

But in a personal Action in the Common Pleas, where there are many Plaintiffs named, and they amerced, the Clerk hath forgotten, and cannot shew how the Usage hath been to make the Estreats against them; but it seemeth with Reason, that all shall be done in one Manner. For it cannot properly be said that a Man hath Mercy shewed and offered unto him if he shall pay, or shall be put to more Charge for the Offence of another Person, which himself hath not done: For the Nature of the Word (Mercy) is, that a Man shall not be punished so much as he hath deserved. By which it appeareth, that every Amercement shall be or ought to be severally assessed upon every one for his own Offence, and that to a lesser Sum than he deserveth to pay. *Quere* the Usage and Manner thereof in the Common Pleas, and look [76.] the Statute of *West.* 1. *cap.* 18. by the Equity of which Statute the Usage is accrued, and doth continue in the Common Pleas and King's Bench, and before the Justices of Assise; and the Clerk of the Warrants in the Common Pleas doth make the Estreats, and doth deliver them unto the Clerks of the

7 H. 6. 12.

Affise, to deliver them unto the Coroners to *affere* the Amercements, and the Coroners do affise the Amercements, and deliver them unto the Clerks of the Affises, and they deliver them back unto the Clerk of the Warrants, who maketh the Estreats: And then one of the Justices of the Common Pleas, or the Clerk of the Warrants, goeth with the Rolls of the Estreats into the Exchequer, and there puts them before the Barons of the Exchequer. And the Form of the Estreat is such:

A Staffordshire: *Of Henry Hart and William Maner, because they had not John Brok, late of B. in the County aforesaid, Yeoman, forasmuch as they were Bail, &c. — Of John N. for himself and his Pledges, because he hath not prosecuted his Writ against N. H. of K. in the County aforesaid, Husbandman, in a Plea of Debt, &c. — Of Stephen White, for his false Clamour against D. of, &c. in a Plea of Detinuc, &c.* And so the Estreat doth rehearse the Cause for which he was amerced, &c. For the Justices do not affise any Sum for any Amercement upon any Person, but make their Entry as abovesaid; and then the Coroners do set the Sum upon the Heads of every of them; as upon every one of them four Shillings or six Shillings, as they shall think fit in their Discretions, *viz.* severally upon every of them.

B And by the Statute of *Magna Charta, cap. 14.* no Spiritual Person shall be amerced according to his Spiritual Benefice, but according unto his Lay Fee, and according unto the Quantity of the Trespass; and if he be otherwise amerced, he shall have a Writ upon the said Statute against the Sheriff, or him who amerced him. And the Writ shall be such:

The King to the Sheriff, &c. Whereas it is contained in the Great Charter of the Liberties of England, That no Ecclesiastical Person shall be amerced according to the Quantity of his Ecclesiastical Benefice, but according to his Lay Fee; and now we understand from the Complaint of S. Parson, &c. that although he holds no Lay Fee, nevertheless you have at your own Will grievously amerced him the said S. in your Tern, in such a Hundred, upon some Matters presented before you in the same Tern, he the said S. not having been thereupon summoned, nor lawfully convicted, and that you unjustly intend to levy that Amercement upon his Ecclesiastical Goods, to the no small Damage of him the said S. and contrary to the Charter aforesaid: We being unwilling that he the said S. should be aggrieved in this Matter, do command you, if it be so, that then you do not cause him the said S. to be in such Manner amerced before you, or any Amercement to be levied upon his Ecclesiastical Goods contrary to the Tenor of the Charter above-mentioned, and the Distress, if any, &c. Witness, &c.

C And upon this he may sue an *Alias* and *Pluries*, and Attachment, unless the Sheriff do according to the Writ directed unto him.

D And it seemeth that the Party may sue a Writ upon the Statute by *Pone, &c.* if he will, against the Sheriff or the other who amerced him, because that the Statute is a (a) Prohibition in itself, and need not sue such a Writ as aforesaid. And by the Statute of *Magna Charta* every Amercement in a

Ant. 75
Kitch. 42.

(a) And therefore it is no Plea to say, that feered *per Pares*, this Writ does not lie. See there the Writ brought against the Bailiff. Note; If the Amercements be afterwards af- 18 Ed. 2. accordant, *Sur le Stat.* 34.

Writ de Nativo habendo.

Court Baron ought to be affeered by two Tenants of the Manor upon Oath. And if the Steward or Bailiff will affeess any Amercement without Affeement, then he who is amerced shall have such Writ:

The King to the Bailiffs of W. Bishop of S. greeting: Whereas it is contained in the Great Charter of the Liberties of England, That no free Man shall be amerced for a small Fault, but according to the Measure of his Fault, and for a great Fault according to the Greatness of the Fault, saving to him his Contencment, and a Merchant in the same Manner, saving to him his Merchandise, and any other's Villain than our's shall be in the same Manner amerced, saving his Wainage, if he fall into our Hand; and none of the said Amercements shall be assessed but by the Oath of honest and lawful Men of the Vicinage, as in the same Charter is more fully contained: And now we understand from the Complaint of the Men and Tenants of the Manor aforesaid, that you wilfully affeess those Men and Tenants in great Sums of Money, when they fall into the Amercement of the Court of the same Manor for any Duty, not permitting that the same Amercement be affeered by the Oath of the Men and Tenants of the same Manor, to the no small Damage of them the said Men and Tenants, and contrary to the Tenor of the Charter aforesaid: We, willing that Charter to be inviolably observed in all and every one of its Articles, do command you that you, wholly ceasing from wilfully assessing such Sums upon the Men and Tenants aforesaid when they fall into Amercement, do permit such Amercement to be affeered by the Oath of honest and lawful Men of the same Court, according to the Tenor of the Charter aforesaid. Witness, &c.

[77.] And he may sue an *Alias* and a *Pluries* thereupon, *vel causam nobis significes*, and afterwards an Attachment against the Bailiffs, or him who assesseth the Amercement.

Writ de Nativo habendo.

THE Writ (*a*) *de Nativo habendo* lieth for the Lord who claimeth the In- A
heritance in any Villain, when his Villain is run from him, and is remaining within any Place out of the Manor unto which he is Regardant, or when he departeth from his Lord against the Lord's Will: And the Writ shall be directed unto the Sheriff; and if the Sheriff will (*b*) not serve the Writ, he shall have an *Alias* and *Pluries*, and Attachment against the Sheriff, if need be.

(*a*) And Note; In a Writ of Neif, the Plaintiff sued by Attorney; he had enfranchised the Villain, in 26 Ed 3. 76.

(*b*) See if the *Pluries* determines the Power of the Sheriff in this Writ also, as in Replevin, it was much doubted, but it seemed it should; and if the *Pluries* be returned in B. R. they may hold Plea there. 11 H. 4. 49. It seemed also, that if on the first Writ the Sheriff sent to

the Bailiff of the Franchise, who does nothing (or gives no Answer) the Sheriff cannot return this, but ought to execute the Writ himself.

See 7 H. 6. 31. on a *Nativo habendo* removed out of the County by *Pone*, whereon the Sheriff had returned *Non inventus*, a *Capias* lies, and on *Non inventus* returned thereon, a *Latitat* went to the Sheriffs of London.

But

- B But if a Man have an Estate but for Term of Life, or for Years, in a Villain, it seemeth he shall not have this Writ of *Nativo habendo*, because this Writ is in the Nature of a Writ of Right for to recover the Inheritance in the Villain, and the same appeareth by the Count in the Writ: *Quere tamen.* V. 1 & 2 Eliz. Dyer 173.
- C And the Sheriff may feize the Villain, and deliver him unto his Lord, if the Villain confess unto the Sheriff that (a) he is his Villain; but if the Villain say to the Sheriff, that he is Frank, then it seemeth that the Sheriff ought not to feize him: As it is in a *Replevin*, if the Defendant claim Property, the Sheriff cannot replevy the Cattle, but the Party ought to sue a Writ of *Proprietate probanda*: And so if the Villain say that he is a free Man, &c. then the Sheriff ought not to feize him, but then the Lord ought to sue a *Pone* to remove the Plea before the Justices in the Common Pleas, or before the Justices in Eyre. But if the Villain purchase a Writ of *Libertate probanda* before the Lord hath sued the *Pone* to remove the Plea before the Justices, then that Writ of *Libertate probanda* is a *Supersedens* unto the Lord, that he proceed not upon the Writ of *Nativo habendo* till the Eyre of the Justices, or till the Day the Plea be adjourned before the Justices, and that the Lord ought not to feize the Villain in the mean time. But at this Day the Writ of *Libertate probanda* is of little Effect, because by the Statute of 25 Ed. 3. cap. 18. the Lord may feize his Villain and alledge Villainage in an Action brought against him by the Villain, although he hath a Writ of *Libertate probanda* depending, which is determined before the Justices *in Banco*, or the Justices in Eyre. And vide 1 Ed. 4. 8, 9. a good Case. 7 H. 4. 45.
- D And if the Lord sue a *Nativo habendo*, and the Villain purchase this Writ of *Libertate probanda*, by that the Sheriff shall not proceed farther in the Writ of *Nativo habendo*, but the whole Plea shall be adjourned before the Justices in Eyre; and then the Writ of *Nativo habendo* and the Record shall be sent

(a) If on a Plaint in Replevin (as 29 Ed. 3. *Replevin* 35.) or on a Writ of Replevin, the Defendant claims Property, and it is received by the Sheriff (as 30 Ed. 3. 22. 31 Ed. 3. *Propri' proband'* 4. as it seems for taking Issues received by the Sheriff) a *Propri' probanda* shall issue, although the Sheriff cannot make Replevin, and Day shall be given to the Defendant in Bank to answer to the King for the Contempt, and to the Party for the Damages on the Claim; yet it seems the Replevin shall continue to answer Damages to the Plaintiff for the Taking. 1 Ed. 4. 9. b. 7 H. 4. 28, 46. 21 Ed. 4. 76. But if it be found for the Defendant, it seems that all is determined, and the Plaintiff cannot have a new Replevin, for the Sheriff cannot execute it, but he may have a Writ of Trespass. 31 H. 6. *Propri' proband'* 5. 31 Ed. 3. *ib.* 3. or else he may remove the Plaint in the County by *Recordare*, (though in Truth it is determined there, by the Claim of Property, &c.) and so try the Property *de novo*, and the Plaintiff shall not

be stopped by the Trial in the *Propri' proband'*, which is only an Inquest of Office. 30 Ed. 3. 21, 22. 31 Ed. 3. *Replevin* 35.

And Note; If the Property be found for the Plaintiff, and at the Day of the Return, the Sheriff returns an Esloiment, and the Defendant makes Default, a *Withernam* shall be granted, and so a *Capias*, *Pluries* and *Exigent*. 39 Ed. 3. 30. But some held that the Plaintiff in that Case shall recover the whole in Damages. See 7 H. 4. 28 *per Hall*, when the Defendant comes in by Attachment after Property found for the Plaintiff, the Plaintiff may have two Counts against him, one on the *Propri' probanda*, and another on the Replevin. 7 H. 4. 46. If the Replevin be returnable in Chancery, *sicut alias vel Caulam*, &c. And the Claim of Property returned thereon, then the *Propri' probanda* shall issue out of the Chancery; but if on the *Pluries* the Claim is returned in *B. R.* or *C. B.* the *Proprietate probanda* shall issue from those Courts. Dyer 173.

Libertate probanda.

before the Justices in Eyre, and the Lord shall declare thereupon, and the Villain shall make his Defence, and plead thereunto; and the Villain shall not declare upon the Writ *de Libertate probanda*, nor any Thing shall be done thereupon; for that Writ is but a *Superfedeas* to surcease for the Time, and to adjourn the Record and the Writ of *Nativo habendo* before the Justices in Eyre: And that appeareth by the Forms of the Writs of *Nativo habendo* and of *Libertate probanda*, which are such:

The King to the Sheriff, greeting: We command you, that justly and without Delay you cause A. of C. to have B. his Villain and Fugitive, with all his Cattle and his whole Train, wheresoever he shall be found in your Bailiwick, unless he be in (a) our Demesne, who fled from his Land after the Coronation of the King Lord Henry, Son of King John: And we prohibit, upon our Forfeiture, that no one unjustly detain him. Witnesses, &c. E

Feft. 79. A.

The Form of the *Libertate probanda* is such:

Libertate probanda.

THE King to the Sheriff, &c. A. and B. her Sister, have shewed unto us, F that whereas they are free Women, and ready to prove their Liberty, F claiming them to be his Niefs unjustly vexes them; and therefore we command you, that if the aforesaid A. and B. shall make you secure touching the proving their Liberty, then put that Plea before our Justices at the first Assises, when they shall come into those Parts, because Proof of this Kind belongeth not to you to take; and in the mean time cause the said A. and B. to have Peace thereupon, and tell the aforesaid F. that he may be then there, if he will, to prosecute his Plea thereof against the aforesaid A. and B. And have there this Writ. Witnesses, &c.

11 H. 4. 48.
Gafcoign ac.

And now by these two Writs it appeareth, that the Lord who sueth the G Writ *de Nativo habendo* shall pursue his (b) Plea upon the Writ of *Nativo*

(a) In a *Latitat* to the Sheriff of London, on a *Nativo habendo* removed hither by *Pone*, the Sheriff returns *Quod Civit' Lond' est antiquis' Civit' Camera Regis, Antiqui' Dominicum Regis, & consuetudinem habet & habuit a tempore quo, &c. Quod si aliquis senilis Conditionis manserit in Civitate per unum Annum & unum Diem quod ex tunc non erit capi' Virtute Brevis de Nativo habendo.* And it was moved, that the Sheriff should be amerced. 1. For that by the Record of *Domesday*, it appears, that it is not Ancient Demesne. 2. For that this Custom of London is against Common Right, and prejudicial both to Citizens and Strangers, and therefore void. 3. That it is a Custom in the Negative, and so does not lie in Usage. 4. Tho' the Custom were good, yet it should not come in by the Sheriff's Return, but by Plea. But it is

otherwise of Ancient Demesne, because there the Writ warrants such a Return, &c. See 7 H. 6. 32. and the Residue thereof. 8 H. 6. 3. 4.

(b) See accord. by *Lodd.* for the Sheriff has nothing to adjourn in Eyre; but by *Rolph*, if the Lord do purchase a *Nativo habendo*, and after that a *Pone*, and then a *Libertate probanda*, and deliver it to the Sheriff, and is afterwards *Nonfuit*, and then purchases a new Writ of *Nativo habendo*, the Sheriff may adjourn it for (Trial of) the *Libertate probanda.* 11 H. 4. 49. *Quere.*

If in a *Libertate probanda*, the Parties are at Issue on the Franchise and Villainage, if pending the Issue, the Defendant seizes the Plaintiff, he shall be fined; *contra*, in *Treipals* for a Villain, and the Lord, pending the Issue, seizes his Goods. 9 H. 5. 1. b.

habendo, and shall declare thereupon, &c. and that the Villain shall make Defence, and upon that Writ *de Nativo habendo* the Freedom shall be tried. And also it seemeth by these Writs, that a Writ *de Libertate probanda* doth not lie, if not upon a Writ *de Nativo habendo* sued out before by the Lord.

I But it appeareth in 12 H. 3. *Itin' North'*, that the Villain sued a *Libertate probanda*, & *obtulit se* at the fourth Day against the Lord, and he did not appear, but made Default, for which, upon the Default of the Lord, the Villain was enfranchised; and he had Writ unto the Sheriff, that he do not suffer the Lord to trouble him after: *Quod vide* in Title *Villainage* in the Abridgment; *vide* 47 H. 3. a good Case of that Matter. 12 Ed. 3. *Villainage* 44. Fitz. Villainage 39.

A And when he sueth the *Nativo habendo*, he shall enter a Plaint before the Sheriff in the County, as he shall do, if he sue a Replevin by Writ unto the Sheriff, he ought to enter his Plaint before the Sheriff; so shall he do upon the *Nativo habendo*: And the Plaintiff shall recite how he is his Villain, and how that he fled from him, &c. And by the Writ of *Libertate probanda* that Plaint shall be removed before the Justices of Eyre, or before the Justices *de Banco*, and then the Matter shall be tried before them, &c. Or the Lord may remove the Plaint by a *Pone* before the Justices of the Common Pleas, and thereupon he shall have Process against the Villain, &c. for the Sheriff cannot determine the Title of Villainage in the County; and that is proved by the Words in the Writ of *Libertate probanda*, *viz. Quia hujusmodi Probatio non pertinet ad te capiend'*, &c. 11 H. 4. 39. *per Norton*. [78.] Fitz. Villainage 3.

B And it is good for the Lord, that when he sueth the *Nativo (a) habendo* unto the Sheriff, that forthwith he sue his *Pone* unto the Sheriff to remove the Plaint before the Justices of the King's Bench: For if after the *Nativo habendo* sued, the Lord sue a *Pone* to remove the Plaint before the Justices *de Banco*, and before he delivereth the *Pone* to the Sheriff, the Villain sueth *Libertate probanda*, and delivereth the same to the Sheriff, by which the Sheriff adjourneth the Plaint before the Justices in Eyre, and returneth the Matter upon the *Pone* before the Justices of the King's Bench; now the Justices of the Bench ought not to proceed upon that *Pone* against the Villain, because that the Sheriff hath returned, that he hath adjourned the Matter before the Justices in Eyre by the Writ of *Libertate probanda*, *quod vide* Hil. 26 Ed. 3. and yet the *Pone* was of elder Date than the Writ *de Libertate probanda*, but was not delivered unto the Sheriff before the *Libertate probanda*. 11 H. 4. 43. Gascoign. Old Nat. Brev. 46. 25 Ed. 3. 49. Villainary 12. that the Party is without Remedy, if not against the Sheriff.

(a) See a notable Case, 11 H. 4. 48. In a *Nativo habendo*, at the *Pluries* the Sheriff returns a *Mandavi Ballivo*, who did nothing thereon, and it excused him of Contempt. (*Quare*,) then a *Non omittas* issued on which he returned, that before the Delivery thereof to him, the Defendant had delivered him a *Libertate probanda*, so that he could do nothing; and by all the Justices he was amerced. 1. Because after the Return of the Writ, the Sheriff had nothing to adjourn by Force of the *Libertate probanda*. 2. Because the *Non omittas*, though awarded after the *Libertate*, ought to be executed, whether it issued by

Wrong or Right; (so it seems to differ from a *Pone*, for that is only to remove the Record, which in Effect was removed before, by the Adjournment, by Force of the *Libertate probanda*, but the *Non omittas* is to another Intent.) 3. For that by the *Pluries*, the Power of the Sheriff to hold Plea is determined, *sed Quære*, for then to what Effect are these Words in the Writ, [*habere facias*]. And also, if so, no *Non omittas* ought to issue, but only Process against the Party, but afterwards the Sheriff in this Case was amerced, and a *Non omittas sicut alias* awarded.

And if a Man sueth several Writs of *Nativo habendo* against two, the two C may join in a *Libertate probanda*, notwithstanding the several Writs.

8 Ed. 4. 16. And a Man can join in a Writ of *Nativo habendo* but two Villains, but in D by Martin, all of the Blood may join. But if they be of the Half blood they shall not join. Br. Villainage 68.

6 E. 2. Vill. 26. (a) And it seemeth that the Villain may sue a *Libertate probanda* before the E Justices *de Banco*, as well as before the Justices in Eyre, although there be no such Writ in the Register. But if such Writ be made returnable before the Justices *de Banco*, it seemeth it is good, and they shall proceed thereupon as if it were before Justices in Eyre.

6 E. 2. Vill. 26. (a) In a Writ of *Niefe*, if the Plaintiff be Nonfuit after Appearance, the F Defendant shall be for ever enfranchised; *quod vide M. 12 Ed. 2.* and upon Departure in Despite of Court, where he appeareth, and saith he will seek Counfel, and afterward he is demanded, and maketh Default, there the Villain shall be for ever enfranchised: And so upon a *Retraxit*, if the Plaintiff say that he will not pursue his Writ of *Niefe*, the Defendant shall be enfranchised for ever (b).

19 Ed. 2. Vill. 31. 39 Ed. 2. Fitz. Vill. 34. the Plaintiff count upon a Confession, and the Defendant acknowledge it, and after the Plaintiff was Nonfuit, and *per Cur'* it is an Enfranchisement for ever. 30 Ed. 1. Vill. 46. Harvy and Mitton, she is enfranchised but during the Marriage; Broughton cont. King took the Difference where the Lord marrieth the Niefe, and where a Stranger marrieth her.

28 Aff. 34. Br. Vill. 23. A frank Man marries a Niefe with Licence, the Lord enfeoffed I. S. the Husband died, the Wife is Niefe, as before, vide 18 Ed. 2. Vill. 35. cont. and there by Devon she remaineth

And if a free Man marrieth a Woman who is a *Niefe* unto another, she G shall be for ever free, although that the Husband dieth, and she survive him, and that by *Britton* in his Book *in favorem Libertatis* (c). And it stands with Reason that the Law be such, because that she and her Husband are but one Person in Law, and she ought to be of the same Nature and Condition to all Intents as her Husband is; but the Husband is for ever free without any Condition in Law or otherwise, and by Consequence the Wife ought to be of the same Condition and Nature as her Husband is; and then if he be once clearly discharged of Villainage to all Intents, she cannot be a *Niefe* afterwards without her own special Act, as by Divorce, or Confession in a Court of Record, and that in favour of Liberty: For a free Woman shall not be Villain for taking of a Villain to be her Husband.

Niefe, but the Seizure is suspended. 13 H. 3. Vill. 43. she shall not be produced to prove Villainage during the Coverture. 30 Ed. 1. Vill. 46. cont. 31 Ed. 3. Vill. 21. cont. See Litt. 42.

13 Ed. 1. In a Writ of *Niefe* it behoveth the Lord who sueth the Writ to bring with H Vill. 38. him two Persons at the least, who are of the Villains Blood, that will confess them to be Villains, otherwise the Writ shall abate: And what shall be sufficient Proof, and what not, see in the Title of *Villainage* in the Abridg- ac. 19 Ed. 2. Vill. 32. Cousin Fe male shall not be brought to prove the Male Villain. 13 Ed. 3. Vill. 36. ac. Old Nat. Brev. 46. ac. Old Te- nures Br. Vill. 68.

(a) See 6 Ed. 2. Villainage 26. Litt. 45. 12 Ed. 2. Villainage 24. 19 Ed. 2. Villainage 31. contr. Quere 13 H. 3. Villainage 43.

(b) See 4 Ed. 4. 25. 30 Ed. 2. Villainage 46. 18 Ed. 2. Villainage 30. con. 29 Aff. 4. con.

(c) See accordant 11 H. 48. 2 H. 4. 25.

ments. But in a *Nativo habendo*, after the Plea is removed by a *Pone*, if the Defendant will confes himself to be Villain, the Plaintiff needeth not to bring any Proof thereof.

I If two bring a *Nativo habendo*, the Nonfuit of one of them is the Nonfuit of them both; for Summons and Severance lieth not in that Writ. But in a *Libertate probanda* it is otherwise, for there the Nonfuit of the one shall not prejudice the other.

K And it appeareth by the Register, that the Sheriff cannot feize the Villain by Force of this Writ of *Nativo habendo*, although that the Words of the Writ are, *Habere facias A. nativum & fugitivum suum*; for these Words give him Power to hold Plea, and not otherwise, as it appeareth in 2 H. 4. in a *Faux Imprisonment*. But if the Villain doth confes unto the Sheriff that he is a Villain, then it seemeth reasonable that the Sheriff ought to feize him, saving the Opinion of that Book. But the Statute now maketh the Matter clear, that the Lord may feize him, and so the Sheriff at his Request. And the

L Procefs in the *Nativo habendo* is Summons, Attachment and Distrefs.

M In a *Nativo habendo* the Plea was removed by a *Pone*, and the Sheriff returned thereupon *Non est inventus*, for which a *Capias* was awarded, and after upon Return of *Non est inventus* a *Latitat* was awarded, upon a Surmise made that he was in a foreign County. P. 7 H. 6.

N And in the *Libertate probanda* the Procefs is as upon the *Pone* sued to remove a Plaintiff in the County upon a Replevin, Summons, Attachment and Distrefs. And the Form of the *Pone* upon a *Nativo habendo* is such:

[79.]

The King to the Sheriff, &c. Upon the Petition of the Plaintiff put the Plea which is in your County by our Writ between A. and B. whom the same A. claims to be his Villain and Fugitive; and summon, &c. the aforesaid B. that he be there to answer the aforesaid A. thereupon: And have there the Summoners and this Writ and the other Writ.

A And if the Villain do remain in Ancient Demesne of the King in the King's (a) Hands, and hath remained there by a Year and a Day, then the Lord cannot have nor maintain this Writ of *Nativo habendo* so long as he remaineth there: But if he hath not remained within the Ancient Demesne of the King a Year and a Day, but for Half a Year, or other Time which doth not make a Year and a Day, then the Lord shall have such Writ unto the Sheriff:

The King to the Sheriff, &c. We command you, that unless A. whom B. claims to be his Villain and Fugitive in your County by our Writ, hath remained in our Demesne of S. for one Year and a Day without Challenge, let not the Plea aforesaid remain in the County aforesaid, for that he hath remained in our Demesne for less Time. Witness, &c. Ant. 77. E.

But it appeareth by the Writ, that if the Lord claim him within the Year and Day that he came into the Ancient Demesne, that then the Villain shall not have Advantage of his staying there: But it seemeth that the Lord ought

(a) See Nat. 46. *contra*, if it be in the Hands of any other Lord, but *Note*; The Lord of a Manor in Ancient Demesne might have Villains Regardant at his Death. 39 Ed. 3. 36.

and *quere*, if all Tenants of Ancient Demesne Lands were not originally Villains, and so came to the King's Grantees.

to claim the Villain within every Year and Day that the Villain stayeth within Ancient Demefne, as he shall make his continual Claim to save his Entry into any Land. But if the Villain do remain in any other Manor than in Ancient Demefne, which is in Possession of other Lord than the King, and there stayeth a Year and a Day, or for many Years, without any Claim made by the Lord, notwithstanding that the Lord may take and seize him, or have a special Writ of *Nativo habendo* against his Villain directed unto the Sheriff, as above is said.

24 Ed. 3.
Br. Vill. 26.

If a Man purchase a Villain of another unto him and his Heirs, and the Villain runneth from him, he shall not have this Writ *de Nativo habendo*, because he hath no Proof of his Blood who will confess them to be Villains unto the Plaintiff; and if he bring Men of the Villains Blood, who confess them to be Villains to a Stranger, and not to the Plaintiff, the same is not sufficient Proof. *Quere tamen.*

And the Lord may have a Writ unto the Sheriff to assist him to distrain his Villains, and the Writ is, *The King to the Sheriff, &c. We command you, that you be in Aid of A. of F. when he himself is not able to distrain his Villains of N. to do to him the Customs and Services due and accustomed. Witness, &c.* See the Statute *Anno 1 R. 2. cap. 6.*

And when the King makes Tallage of his Ancient Demefne Lands in his Hands throughout the Realm, then the other Lords who have Ancient Demefne Lands of the King in Fee-farm, shall have such Writ to tax them; and the Writ is such:

The King to the Sheriff, &c. Because we have made our Demefnes throughout England to be taxed, we command you, that if the Manor of C. was some time our Demefne, or of our Ancestors heretofore Kings of England, and hiterto hath been accustomed to be taxed, then cause A. to have a reasonable Tallage of his free Tenants in the Manor aforesaid, as hath before been accustomed to be done. Witness, &c.

And if the King's Villains do convey themselves out of the Manor, then a special Writ shall be directed unto the Sheriff, that he inquire by the Oaths of honest and good Men the Names of them, and where they abide, and that he make them return, and abide within the Manors as before.

If a Woman sueth a Writ of *Libertate probanda*, the Form of the Writ is such: *Alice hath shewed to us, that whereas she is a free Woman, &c. and ready to prove her Liberty, &c. as above.*

Writ de Securitate Pacis.

G THIS Writ lieth when a Man is in Fear or Doubt that another will beat or assault him, and lieth properly where one Man doth threaten another Man to kill him, beat him, or assault him; then may he come into the Chancery, and pray to have such a Writ unto the Sheriff, and the Form of the Writ is such:

The King to the Sheriff of Lincolnshire, greeting: Because A. of B. hath heavily complained to us, that C. openly threatens him of his Body; we Command you, that you cause the same A. to have of the aforesaid C. our firm Peace according to the Custom of England, so that you may be secured that Damage or Peril may not come to the same A. in his Body, by the said C. or by his Procurement. Witness, &c. Or thus: Of the Burning of his Houses openly threatens, we Command you, &c. so that, &c. Damage come not to the same A. in his Houses aforesaid, by such Burning, &c. And a Man may have a Writ for the Safety of his Body, and for the Burning of his Houses, all in one Writ. And he may have an Alias and a Pluries, and Attachment against the Sheriff, if he does not his Office, &c.

H And by the ancient Course of Law he ought to take his Oath upon a Book before he have this Writ, before a Master of the Chancery: But now they use to sue forth such Writs by their Friends, who will sue for them without any Oath made; and the same is ill done, because they are many Times sued, more for Vexation than for any good Cause; and the Justices of the King's Bench will not grant any Writ for Surety of the Peace, without making Oath that he is in Fear of corporal Damage. And the Justices of Peace ought not to grant any Warrant at the Suit of any one to find Sureties of the Peace, if the Party who doth require the same will not take his Oath that he requireth the same not for Malice, but for the Safety of his Body. Fitz. Just.
del Peace.

A And if a Man hath sued a Writ against one directed unto the Sheriff, and the Sheriff take Security of him to keep the Peace, and afterwards he breaks the Peace against him who demanded the same; he which demanded the Surety of Peace shall have Attachment against him to find Sureties; and the Writ is such: [80.]

The King to the Sheriff, &c. If A. shall make you secure, &c. put, &c. B. that he be before our Justices, &c. to shew wherefore, seeing that the aforesaid B. threatened the aforesaid A. of his Body, and the aforesaid A. upon that Occasion brought to you our Writ of having the Peace thereupon, he the same B. although he gave you Security, that by him or his Procurement, Damage or Peril should not come to the aforesaid A. of his Body, nevertheless the aforesaid B. with Force and Arms hath made an Assault upon the aforesaid A. at W. and him, &c. to the manifest Contempt of us, and to the great Damage of him the said A. and against our Peace: And have you there the Pledges and this Writ. Witness, &c.

And upon this Writ the Plaintiff shall recover Damages, and the Defendant shall be fined for his Contempt, if he be found guilty.

And

And if any one will have a Writ for Surety of the Peace against any one who dwelleth within the Cinque Ports, then he shall have a Writ out of the Chancery directed unto the Constable of *Dover*, and unto the Warden of the Cinque Ports, and the Writ shall be such:

The King to his beloved and faithful N. his Constable of Dover, and to the Warden of his Cinque Ports, greeting: We Command you, that having heard the Complaint of A. because that B. being of the Liberty of the Cinque Ports threatens, &c. and having called before you the Parties aforesaid, and having thereupon heard severally their Reasons, that hereupon you cause to be done to the same A. due and speedy Fullness of Justice, as of Right, and according to the Law and Custom of the aforesaid Ports ought to be done, and at other Times hath been accustomed to be done in the like Case. Witness, &c.

But it is a common Opinion, the Security which the Sheriff ought to take of the Party who ought to find Sureties for the Peace, ought to be taken by Bond, that is to say, to bind the Party and his Sureties by Bond, that he keep the Peace, and that he burn not the Houses, &c. But now after the Statute of 1 Ed. 3. c. 16. which appointeth that certain Persons shall be assigned in the Chancery to keep the Peace, there are other Forms of Writs for the Ease of the People who will have the Peace against other Persons, which Writs shall issue out of the Chancery; and some of them are directed unto the Justices of the Peace, and unto the Sheriff, and some are directed only unto the Sheriff: And these Writs are of other Form, which is such:

The King to his beloved and faithful I, &c. and his Companions our Justices assigned to keep our Peace in the County of S. greeting. Or thus: To the Keepers of our Peace in the County of S. &c. and to the Sheriff of the same County, and to every one of them, greeting. Or thus: To the Sheriff of S. greeting: A. hath besought us, that whereas he is grievously and manifestly threatened by E. of his Life and maiming of his Members, and also of burning his Houses, we would provide for the Security of him the said A. in this Behalf; We granting the Supplication aforesaid, command you, (or thee) firmly injoyning that you make the said E. to come personally before you, (or thee) and to find sufficient Manucaptors who will be Bail for him under a certain Penalty to be imposed upon them by you, (or thee) for which they or you will answer to us. Or thus: And that by any Means ye (or you) compel him the said E. to find sufficient Security under the Penalty of 100 l. to be paid to our use, or every one of them in the Penalty of, &c. that he will not do, or procure to be done, any Damage or Ill to him the said A. of his Body, or his Houses by such Burning. And if he shall refuse to do this before you, (or thee) then that you (or ye) commit him the said E. to our next Gaol, to be kept safely in the same, until he will do this freely: And when you (or ye) shall have taken that Security, that without Delay you (or ye) render us more certain, and certify us thereof in our Chancery under your or any of your Seals (or under thy Seal) distinctly and openly, ye (or you) remitting to us this Writ.

And for this Form of Writ, when the Writ is in the plural Number, the Writ is directed unto the Justices of Peace, or unto the Justices and Sheriff. And when it is in the singular Number, the Writ is directed unto the Sheriff only, or unto one Justice only.

And

F And if the Husband threaten his Wife to beat or to kill her, she shall have this Writ,

A. the Wife of B. hath besought us that whereas she is grievously and manifestly threatened by the aforesaid B. of her Life, and maiming of her Members (as above until) you will answer to us, that by any Means you do compel, &c. that he shall well and honestly treat and govern the aforesaid A. and that he shall not do, nor procure to be done any Damage or Evil to her of her Body, otherwise than what reasonably belongs to her Husband, for the Sake of Government and Chastisement of his Wife lawfully, &c.

G And if a Man be in Variance with other Men, and he is in Doubt that Damage or Hurt will come unto him, or his Servants or his Goods, by Reason of this Variance; then he shall have a special Writ against them directed unto the Sheriff, that he cause them to find Security that they do not damage or hurt the other in his Body, or his Servants, or other his Goods, in a certain Sum, &c. And if they will not find Security, that then he arrest them and keep them in Prison, until they will find Sureties: And that the Sheriff certify all that is done upon the same into the Chancery, upon Pain, &c. as it appeareth by the Register. And that Security ought to be taken by Recognizance, as it seemeth; *tamen quere.*

A Writ of *Supplicavit*, directed unto the Justices of Peace, or unto the Sheriff, or unto both, against any Man, then he against whom the Writ is sued may come into the Chancery, and there find Sureties in the Chancery, that he will not do Hurt or Damage unto him that sueth the Writ; and then upon that he shall have a Writ of *Supersedeas* out of the Chancery, directed unto the Justices of Peace, or unto the Sheriff, or unto one of them, reciting how that he hath found Sureties, in Chancery according to the Writ of *Supplicavit*, and reciting the Writ of *Supplicavit*, and the Manner of Security that he hath found, and the Sum of Money in which they are bounden; commanding the Justices and Sheriff that they surcease to arrest him, &c. or compel him to find Sureties, &c. and if they have arrested him for that Cause, and for no other, that then they deliver him, &c. See the Form of the Writ in the Register. And if the Party who ought to find Sureties, cannot come into the Chancery to find such Surety, then his Friend may purchase a *Supersedeas* in the Chancery for him, reciting the Writ of *Supplicavit*, &c. and that such a one and such a one are bounden for him in the Chancery in such a Sum, that he shall keep the Peace according to the Writ of *Supplicavit*: And the Writ shall be directed unto the Justices of the Peace and Sheriff, that they or some of them take Surety of the Party himself, according to the Writ of *Supplicavit*, for to keep the Peace, &c. and that then they surcease to arrest him; and if they have arrested him for that Cause, that they then deliver him.

B And sometimes the Writ of *Supplicavit* is made returnable into the Chancery at a certain Day; and if it be so, then if the Justices do not certify the Writ, nor the Recognizance, and the Security which is taken, the Party who sued the *Supplicavit* shall have a Writ of *Certiorari* directed unto the Justices of Peace, to certify the Writ of *Supplicavit*, and what they have done thereupon, and the Security which is found, &c. and so the Party shall have such *Certio-*

rari unto the Justices of Peace, to certify the Security taken upon *Supplicavit*, although the Writ of *Supplicavit* be not returnable in the Chancery.

And so if a Man demandeth Surety of the Peace in the County against any Man, he shall find Sureties in the County before the Justices of the Peace, &c. he who demandeth the Security may sue a Writ of *Certiorari* directed unto the Justices of Peace, to remove the Surety of Peace, and the Recognizance taken thereupon; and to certify that Recognizance, and Security taken, under the Seals of the Justices of Peace, or one of them. And if the *Certiorari* be sued upon a Writ of *Supplicavit*, then the *Certiorari* shall rehearse the Writ of *Supplicavit*; and if it be sued upon Surety demanded in the County without a *Supplicavit* sued, then the Form of the Writ of *Certiorari* is such:

The King to the Keepers of his Peace in the County of L. and to every one of them, greeting. We willing for certain Causes to be certified of the Tenor of a certain Security of the Peace before R. B. and his Companions, Keepers of our Peace, and our Justices assigned to hear and determine divers Felonies, Trespases and Misdemeanors in the County of L. of R. of W. for that he shall not do, nor procure to be done any Damage or Evil to B. of F. or to any of our People, which said Security, of your Office taken, remains in your Power as it is said, we command you, that without Delay ye render us more certain thereof in our Chancery, under your, or one of your Seals, distinctly and openly, remitting to us this Writ.

And when the Writ of *Supplicavit* is directed only to the Sheriff, then the *Certiorari* shall be directed unto the Sheriff only, to make Return of the Security found, if he have taken any Security, &c.

Ant. 80.

Post. 82.

Vid. 12 H. 7.

17 by Fineux,

by the Com-

mon Law the

Sheriff is Con-

servator Pacis.

Vid. Lamb.

110. 11. and

now by the

Statute of

33 H. 8. cap.

39. it is clear

that Bond

shall not be

taken.

And if a Man find Sureties to keep the Peace against certain Persons before the Sheriff, without any Writ of *Supplicavit* sued by him who demandeth Surety, and without the Writ used of ancient Form; then the Party who demanded the Surety may have a *Certiorari* unto the Sheriff to certify the Security taken by him into the Chancery, &c. without making Mention in the *Certiorari* of any Writ sued forth to cause the Sheriff to take such Security; and by that *Certiorari* it seemeth, that the Sheriff *ex officio* may cause the Party to find Surety to keep the Peace, if any one pray the Sheriff to have such Surety, and that the Sheriff bind them by Recognizance, and that he certify the same into the Chancery by the *Certiorari*: For if he certify an Obligation taken for Security, that Certificate cannot make the Bond to be a Thing upon Record, and the Party cannot be bounden unto the King but by Matter of Record, or unless that he Will come into the Court, and confess the same to be his Deed, and pray to have the same enrolled. And it seemeth that the Law is such, because that by the Common Law the Sheriff is Conservator of the Peace, and hath the Keeping and the Custody of the County for the Time that he is Sheriff; and the same appeareth by his Commission and Letters Patent which he hath, the Words of whose Patents are such:

Rex, &c. Commisimus vobis Custodiam, &c. and by that he takes his Authority, the which is a Matter of Record, as the Commission which was made

made to them who shall be Justices of the Peace, the which Commission, giveth them Authority to hear, determine and enquire of all those Things which are done against the Peace. And by Reason of that Commission they have Power to bind Men by Recognizance to keep the Peace, upon Complaint made unto them by any Person; and yet there is not express Authority given them by the Commission to take that Recognizance; but it followeth, that because they have Authority to cause Men for to keep the Peace, and to hear and determine Offences against the Peace, they have Power to bind Men by Recognizance so to do; for every Thing which they have done by Virtue of their Commission ought to be taken as a Matter of Record. And by the same Reason the Sheriff, because that his Patent is of Record, and he is Conservator of the Peace in every Place, every Obligation which he taketh for to keep the Peace shall be in Law taken for a Recognizance, and especially when it is certified in the Chancery by *Certiorari*: But yet all the Pleas that are holden before him in the County are not of Record, nor Pleas holden before him in the County by Writ of *Justicies* are not taken as Matters of Record; for these Pleas are holden before by Reason of the Courts which he hath by Reason of his Office, as the County and Hundred Court, &c. But the Leets and Torns which are for the Commonwealth, as for keeping of the Peace, these are Courts of Record, and by Consequence for keeping of the Peace the Sheriff is Judge of Record, and may take Recognizance for the keeping of the Peace *ex officio*; but if he so do, and take Recognizance upon a Writ of *Supplicavit*, or other Writ directed unto him to take Sureties for keeping of the Peace, it is the stronger; but give Credit to better Reason, and therefore *quere* thereof.

[S2.]
 Vide 7 H. 4.
 34. ac.
 Crompt. 125.

Bro. Lect 39.

Bro. Lect 29.

9 Ed. 4. 31.

Writ de (a) Auxilio ad Filium suum Militem faciend' vel ad Filiam maritand'.

A THE Form of the Writ is such:

The King to the Sheriff, &c. We command you that justly, &c. you cause A. to have reasonable Aid of his Knights and Freeholders in your Bailiwick to make his eldest Son a Knight, or to marry his eldest Daughter, according to the Form of the Statute thereupon provided by the Common Council of our Kingdoms of England. Witness, &c.

B And a Man shall not have this Writ before that his Son hath accomplished the Age of fifteen Years, nor for to marry his Daughter before she be of the Age of seven Years, as appeareth by the Statute of *West. 1. cap. 35.*

(a) A Tenant in Frankalmoign shall not pay Aid. See *Rot. Parl. 8 Ed. 2. Mem. 23. pro Abbatisa de Cadamo.*

And he who holdeth his Lands by a Knight's Fee, shall pay twenty Shillings unto the Lord, to make his Son a Knight, or for to marry his Daughter, and no more. C

And the Tenant who hath Lands of the yearly Value of twenty Pounds holden in Socage, he shall pay twenty Shillings unto the Lord to make his Son a Knight, or for to marry his Daughter.

And he who holdeth by Half a Knight's Fee shall pay ten Shillings, and he who holdeth Lands in Socage of the Value of ten Pounds by the Year shall pay ten Shillings. And so according unto the Rate of the Value of the Socage Land, and according unto the Quantity of a Knight's Fee, he shall pay his Aid, and that by the Statute before-mentioned.

But this Aid, to make the Son a Knight, or to marry his Daughter, the Lord was to have by the Common Law of his Tenants, and the Statute puts it only in Certainty. And the Lord may distrain his Tenants for this Aid, and avow for the same if he will; and he need not for to sue this Writ unless he will. And this Writ is directed unto the Sheriff, and he may sue an *Alias* and a *Pluries*, and an Attachment against the Sheriff, if he will not assist the Lord to distrain his Tenants for this Aid. E

And the King's Tenants in like Manner shall pay Aid unto the King to make his eldest Son a Knight, or for to marry his eldest Daughter, &c. *viz.* Every one who holdeth by a Knight's Fee twenty Shillings, and he who holdeth by Half a Knight's Fee ten Shillings, and so according to that Rate. F

And in like Manner every one who holdeth of the King in Socage twenty Pounds Land shall pay twenty Shillings to make his eldest Son a Knight, or for to marry his eldest Daughter. And he who holdeth ten Pounds Land in Socage shall pay ten Shillings, and that is appointed by the Statute *de Provisionibus*, Anno 25 Ed. 3. cap. 10. And the Statute setteth the Aid certain, because that before the said Statute, the King will distrain for more to make his Son a Knight, or to marry his Daughter; but now the Statute appointeth that the King shall have no more.

And if the eldest Son dieth before he cometh to the Age of fifteen Years, or before the Lord hath levied the Aid to make him Knight, then the Lord shall have Aid for the younger Son, to make him Knight when he cometh to such Age, and yet he is not *primogenitus filius*, as the Writ doth suppose, but he is the *Primogenitus* which is then alive, and that is sufficient, for he ought to be Heir apparent. And so it is if the eldest Daughter dieth before the Lord hath levied Aid of his Tenants for to marry her, then he may levy Aid for the next eldest which is then living, after she is of the Age of seven Years. G

And by the Statute the Writ which shall be directed unto the Sheriff to levy such Aid for the Lord, shall mention that the Son is of the Age of fifteen Years; and if it be for the Daughter, it shall mention she is of the Age of seven Years, otherwise the Writ is not good. But that Form is not in the Register, for it seemeth the Register was made before the Statute of *West.* 1. and therefore the Writ ought to be according as the Statute ordaineth it. H

And

- I And if the Lord have Aid to make his Son Knight, or to marry his Daughter, and dieth before he hath paid the same, then the Son or Daughter shall have an Action of Debt against the Father's Executors for the Money; and if the Executors have no Goods of the Lord, then the Daughter shall have an Action of Debt against the Father's Heir, for so much of the Money as she wanteth of that which her Father had levied to marry his Daughter: And that is by the Statute of *West. 1. cap. 35.* And he who holdeth by Grand Serjeanty or Petit Serjeanty, shall not pay Aid to make the Son a Knight or to marry the Daughter, as it appeareth *M. 11 H. 4. 32. (a).*
- B And if the Lord doth levy Aid for the Marriage of his Daughter, and afterwards marieth her, then the Daughter shall not have an Action of Debt against the Father's Executors for the Money levied, &c. But if the Daughter be not married in the Life-time of the Father, &c. by him, then the Action doth lie. And so it seemeth, that if the Son be not made Knight in the Life-time of the Father, that he shall have an Action against the Father's Executors for the Money levied to make him Knight.

[83.]
See after 122.
G.

Writ de Scutagio habendo.

- C THIS Writ for Efcuage lieth in Case where a Man holdeth Lands of the King by Knights Service, to which Homage, Fealty and Efcuage is appendant: And he who holdeth of any Lord by such Service, who holdeth over of the King by the like Services, when the King maketh a Voyage Royal in War against the *Scots*, or against the *Welsh* in proper Person, or by his Lieutenant, then he who holdeth by Knights Service ought to go in Person, or find a Man to go for him, in the War with the King, or his Deputy in that War, for forty Days at his own Cost; and if he do not go, or not find a Man so to do for him, then he shall pay for that Default, and not doing of his Service, such Sum of Money as shall be assessed by Parliament; for a Knight's Fee so much, and for Half a Knight's Fee so much; and so according to that Rate. And then he who holdeth by a whole Knight's Fee shall pay so much for Efcuage, as the Parliament doth assess that a whole Knight's Fee shall pay, if he hath not done the Service; and he who holdeth by Half a Knight's Fee shall pay according to that Rate; and those who have done their Services and gone in War, shall not pay any Thing. And that Sum of Money is called Efcuage, *Servitium Scuti.*
- D And if a Man holdeth of the King by Knights Service, and to go with him in his War, &c. then that Lord shall have Efcuage of his Tenants who hold of him by the like Service; but the Sum which he shall have and levy ought to be assessed by Parliament (as afore is said) before he distrain for the same.

Vide Lit. 19 and 20.

Vide 16 Eliz. Dyer 329. that he who holdeth by the Moiety of a Knight's Fee, holdeth by Knights Service, and so it shall be intended, if it be not found to the contrary.

(a) Nor any other Tenures but Chivalry and Socage, agreed by all the Justices, 10 H. 6. *Acquory* 267.

Lit. 35.

And if a Man hold of any Lord, to guard his Castle in Time of War, or E. to blow a Horn in the Time of Invasion of Enemies, the same is Knights Service: But it seemeth, that for those Lands they shall not pay Escuage, if they do not their Services, but the Lord shall distrain them for not doing their Service, and shall have Recompence for the same. So that none shall pay Escuage, but only those who hold by such Services, to go into the War, or to find a Man to go, &c. *Tamen quære.*

And if he who holdeth of the King by Knights Service to go with the King I. in War, do his Service, &c. then he shall have a Writ for him directed unto the Sheriff, to have Escuage of those who hold of him by the like Service. And the Form of the Writ shall be such :

The King to the Sberiff, &c. Because our beloved and faithful W. D. had his Service with us by our Command, in our Army of Scotland, in the first Year of our Reign. Or thus; Was with us by our Command in our Army, &c. in the first Year, &c. as appears to us by the Rolls of A. our Constable of our Army aforesaid. Or thus; Hath made Fine with us for his Service in our Army of Scotland, in the first Year, &c. as appears to us by the Certificate of our Treasurer and Barons of our Exchequer sent by our Command into our Chancery: We command you, that you cause the said W. D. to have his Escuage of the Knights Fees, which they then held of him in your Bailiwick, to wit, eight Shillings each Shield for the Army aforesaid, and this you in no wise omit. Witness, &c.

And by that it appeareth, that if the King's Tenant goeth with the King's G. Lieutenant or his Deputy in War, that the Constable of the Host ought to certify the same into the Chancery before the King's Tenant shall have a Writ to levy the Escuage of his Tenants; and if the King's Tenants do agree with the King for his going, &c. then the King ought to be certified thereof in the Chancery by the Treasurer and Barons of the Exchequer, before that he shall have a Writ to levy the Escuage of his Tenants.

And by that it appeareth, that if the King's Tenant do not go in the H. Voyage, nor agree with the King for that Voyage, that then he shall not have Escuage of the Tenants, nor distrain the Tenants for the same.

And if a Man holdeth of the King by Socage, and others hold of him by I. Knights Service, and the King maketh a Voyage of War into *Scotland* and *Wales*; now it seemeth he shall not have Escuage of his Tenants, if he goeth not with the King in the Voyage; but if he goeth with the King or his Deputy, or agree with the King for that Voyage, then it seemeth he shall have Escuage of his Tenants, and shall have the aforesaid Writ. And it is not material, whether he hold by Knights Service or in Socage.

And if there be Lord, Mesne and Tenant, and each holdeth of the other K. by Knights Service, if the Tenant go into *Scotland* by the King's common Summons, then the Mesne shall not pay Escuage: *Quod conceditur per Cur' Trin. 5 H. 5.*

[84.] And if a Man holdeth Lands by such Service, that he shall pay a Penny, A. Vide Title Avowry 215. or a Pair of Spurs, when Escuage runneth, &c. the same shall not properly be Escuage, as it appeareth in 15 *Ed. 2.* Title *Avowry* in the Abridgments. See before 83. Lit. 26. E.

And

- B** And *vide* 19 R. 2. that Garder of a Castle doth countervail Efcuage, fo that his Heir fhall be therefore in Ward, and fo of Grand Serjeanty; and yet it feemeth they fhall not pay Efcuage. *Quod vide* in Title Gard, *ibid.* 24, 36.
- C** And in Title *Quare impedit*, in the Abridgments, that Efcuage certain doth not make Knights Service. *Hil.* 5. 3.
- D** And if there be Lord, and many feveral Mefnes and Tenants, and each holdeth by feveral Knights Service, if the Tenant Paravail of the Land doth the Services, and goeth with the King in War, &c. the fame fhall excufe all the other Mefnes; for for one Land but one Service can be demanded, *viz.* to go, or to find a Man to go, &c. and fo the Mefne Paramount here is excufed, becaufe that the Service is done by the Tenant, &c.
- E** And when the King will levy Efcuage of his Tenants, he ufeth to grant a Commission to certain Perfons. And the Form of the Commission is fuch:

The King to his beloved, &c. We have assigned you to levy and collect our Efcuage of our Army of Scotland, in the first Year of our Reign, in the County of K. as well within Liberties as without, of the Knights Fees which they then held of us in Chief, or of the Efcbeats and Honours then being in our Hand, or of the Purchase of our Ancestors or of us, as of the Knights Fees which are held of Archbifhopricks, Bifhopricks, Abbies, Priories, or other Dignities or Offices Ecclefiaftical whatfoever which were then in our Hand, and of the Inheritances of Heirs within Age, and being in our Custody; to wit, forty Skillings of every Fee for the Army aforesaid; fo that you may have all the Monies thence coming, with all Particulars, at our Exchequer as soon as you can, to be paid to us there. And becaufe many of the Fees aforesaid have come to the Hands of divers Perfons, as well in the Times of our Ancestors as in ours, to wit, some by hereditary Descent, as well in Parcels as in other Manner, and some by Alienations thereof diversely made, we assign you to inquire by the Oath of honest and lawful Men of every Hundred in the County aforesaid, as well of Knights girt with a Sword as of others, by whom the Truth of the Matter may be better known, who held Knights Fees, or any Part of the same Fees in the same County in the Time aforesaid, as of our Crown of England, or of the Purchase of our Ancestors and us, and of the Archbifhopricks, Bifhopricks, Abbies, Priories, and other Dignities and Offices before said, and also of the Inheritances of the Heirs aforesaid, then being within Age, and how many Fees, and what Parts of a Fee, every such Tenant then held, and in what Towns distinctly, and who were Ancestors of them who held by hereditary Descent, and who in other Manner, and who also were the Heirs within Age and in our Custody, and what Archbifhopricks, Bifhopricks, Abbies and Priories, and other Dignities whatsoever or Offices (the Keeping of the Temporals whereof belongs to us) were vacant at that Time. And thereupon we command you, by the Faith wherein you are bound to us, firmly injoining that at certain Days, &c. you do and fulfil the Premiffes in Manner aforesaid, and the Inquifitions upon the Premiffes distinctly and openly made, which may make plain Mention of every Fee, and of the Names and Surnames of the Tenants some Time feverally holding them, while they were held whole, and of thofe who afterwards fucceffively held them after Partitions of the same between Heirs Parceners, or by Alienations, as is afore said, have at the Exchequer aforesaid, about the Feast of
Eafter

Easter next coming, under your Seals and the Seals of those by whom they were made. We also command our Sheriff of the County aforesaid, that at certain, &c. he cause to come, &c. so many and such honest and lawful Men, as well Knights girt with the Sword, as others of his Bailiwick, as well within Liberties as without, by whom the Truth of the Matter may be better inquired and known, and that he do obey and attend upon you in the Premises: We also command the Treasurer and Barons of the Exchequer aforesaid, that they speedily send to you in Writing such Fees as are found at the Exchequer aforesaid touching the Lands and Tenements in the County aforesaid, for Evidence and for the greater Expedition of the Premises: In Testimony whereof, &c. Witness, &c.

19 Ed. 2. Br. Tenures 68. Lessee for Life may do Escuage. 6 Ed. 2. Gard 12. he shall have the Ward, because it is a Profit; he shall have Escuage, because it is a Suit real; by Wilbie. Scrope cont.

And a *Venire facias* shall be sent unto the Sheriff close upon this Commission, and another Writ close unto the Treasurer and Barons, &c. *quod Foedum mittant, &c.*

And now it appeareth by this Commission, that the King shall have Escuage F of the Tenants who hold of these Lands or Manors which the King hath in his Hands by reason of Ward, or by reason of the Vacancy of a Bishoprick, &c. Or if he have an Estate for Years in the Seigniori, he shall have Escuage of the Tenants, &c.

And so shall another Lord have, if he have a Term for Years or for Life in the Seigniori, if he go in Voyage with the King in War into *Scotland, &c.* he shall have Escuage then of the Tenants which hold of him by Knights Service; for the Tenant is not bound to go, but for to defend his Lord, or to find a Man for to defend him; and then if the Lord do not go into the War, the Tenant is excused.

[85.] *Writ de Securitate inveniend' quod se non divertat ad Partes exteras, sine Licentia Regis.*

Vide 1 Eliz. Dyer 165.

2 Co. 17. b.

BY the Common Law every Man may go out of the Realm (a) to merchandise, or on Pilgrimage, or for what other Cause he pleaseth, without the King's Leave; and he shall not be punished for so doing; but because that every Man is of Right for to defend (a) the King and his Realm, therefore the King at his Pleasure by his Writ may command a Man, that he go not beyond the Seas, or out of the Realm, without Licence; and if he do

(a) See *Dyer* 189. If one beyond Sea does not return at the King's Command under the Great or Privy Seal, his Lands and Goods shall be seized for the Contempt. And see the like in *Dyer* 176. where a Baron had Licence to go beyond Sea, to be void on a Condition which is afterwards broken. On a *Mondamus* to return by Letters under the Privy Seal, and a Refusal certified by the Messenger into Chancery, and

the Certificate sent by *Mittimus* into the Exchequer, a Commission shall issue to seize his Lands.

And *Note*; It is there held, 1. That the Licence is not countermandable within the Term. 2. That the Certificate of the Contempt is not traversable, because not triable *per Pays*. *Note* also; The King has only the Profits of the Lands, and therefore observe well the Statute 13 *Eliz.* c. 3. *Dyer* 375.

the contrary, he shall be punished for disobeying the King's Command. And it seemeth that this Command may be made by the King's Writ under the Great Seal, and also under the Privy Seal, or his Signet; for by the Law the Subject is bounden to take Notice of every of the King's Seals in such Case, as well as of the Great Seal.

B And there are two Manners or Forms of such Writs; one is directed unto the Party, and the other unto the Sheriff, commanding him that he cause the Party to find Security that he shall not go out of the Realm without the King's Licence. And the first is such:

The King to I. of B. greeting: Because we are given to understand, that you design to go out of the Way toward foreign Parts, and intend to prosecute there many Things prejudicial to us and to our Crown, in Contempt and Prejudice of us, and contrary to our Proclamations and Inhibitions thereupon often made: We, willing to oppose such Contempt and Prejudice, strictly (a) forbid you, under the Peril that may fall thereon, that in any wise you go not out of the Way towards foreign Parts without our special Licence, nor attempt or cause to be attempted any Thing to be prosecuted there, which may in any Manner be able to prevail to the Prejudice of us or of our said Crown, neither send any Person there for this Purpose. Witnesses, &c.

C And also the King by his Proclamation may inhibit his Subjects, that they go not beyond the Seas, or out of the (b) Realm, without Licence, and that without sending any Writ or Commandment unto his Subject; for perhaps he cannot find his Subject, or know where he is, and therefore the King's Proclamation is sufficient in itself. And if the Subject do contrary thereunto, it is a Contempt, and for so doing he shall be fined to the King.

^{12 & 13 Eliz.}
Dyer 296. ac.

D The other Form of the Writ directed unto the Sheriff is such:

The King to the Sheriff, &c. Because we are given to understand that A. B. Clerk, purposeth to go over towards foreign Parts to prosecute there many Things prejudicial and hurtful to us and many of our People: We, willing to resist his Malice in this Behalf, command you, firmly enjoining that you cause the aforesaid A. B. to come corporally before you, and by what Means you can compel him to find sufficient Manuaptors who will bail him, under a certain Penalty to be reasonably imposed on them by you, for which you will answer to us. Or thus; And him the said A. B. to find sufficient Security, under the Penalty of one hundred Pounds, to be paid to our Use, or every one of them in the Penalty of, &c. that he (go not out of the Way, or) turn himself towards foreign Parts without our special Licence, nor shall presume to prosecute, or cause to be attempted to be prosecuted, any Thing whatsoever there, which may be able to prevail to the Contempt of us, or to the Prejudice or Damage of our People, neither send any Person or Persons there for this Purpose. And if he shall refuse to do this before you, that

(a) See several ancient Prohibitions *De non transiretando, &c.* Rot. Claus. 10 H. 3. m. 27. dorso. Claus. 11 H. 3. m. 25. dorso. Claus. 2 Ed. 3. m. 5. dorso. *Et Nota* Claus. 3 Ed. 3. m. 36. dorso, *apponitur Portus de Dover tantum.*

(b) See Dyer 165. & Rot. Claus. 25 Ed. 1. m. 25. dorso. *Lib. Parl.* 204. And note Dyer

296. accordant. But till such Proclamation made or Writ issued, it is no Contempt for any Person to go beyond Sea, although he intends to live there out of his due Obedience: For his Purpose or Intent is not triable. See the Statute of 5 R. 2. c. 2. repealed by Stat. 4 Jac. 1. c. 1.

Writ of Trespass.

when you do commit him the said A. to our next Gaol, to be kept safely in the same until he will freely do this; and when you shall have so taken that Security, you thereupon without Delay shall render us more certain, or shall without Delay certify us in our Chancery under your Seal distinctly and openly, remitting to us this Writ. *Witness, &c.*

And this Writ may be directed unto Justices of the Peace, or unto the Sheriff, or unto both; and the Form may be as the Writ of *Supplicavit*, which is directed unto the Justices of the Peace, and unto the Sheriff, to cause him to find Sureties, &c.

And every one, upon a Surmise made unto the Chancellor, may sue forth this Writ for the King; and then the Party against whom it is sued may come into the Chancery, and obtain Licence by Letters Patent or by Letters under the Privy Seal or Privy Signet; and the Licences are good, although they be not under the Great Seal, because those Letters will excuse his Contempt. And such Licences are called (a) Passports. And now by the Statute of 5 R. 2. c. 2. it is ordained, That no Person pass out of the Realm without the King's Leave, but those who are excepted in the Statute, and therefore see the Statute.

Repealed per
4 Jac. 1. c. 1.

Writ of Trespass.

THERE are two Manners of Writs of Trespass: One is of a Trespass which is Vicountiel, and is directed unto the Sheriff, and is not returnable, but shall be determined in the County before the Sheriff; and in this Writ he shall not say, *Quare vi & armis, &c.* but the Form of the Writ is such:

[36.] *The King to the Sheriff of Lincolnshire, greeting: W. of B. hath complained unto us, that C. made an Assault upon him the said W. at N. and beat, wounded and ill treated him, and other enormous Things to him did, to the no small Damage and Grievance of him the said W. And therefore we command you, that you hear (b) that Complaint, and afterwards justly cease him to be thereupon brought before you, that we may hear no more Clamour thereupon for want of Justice. Witness, &c.*

And by this Writ the Sheriff shall hear and determine that Trespass, &c. by Inquest according to the Common Law; and this Writ is in Effect a Commission unto him, and he may declare upon this Writ unto his Damage of twenty Pounds, or more.

And another Form of (c) Writ for Goods is such:

A

(a) See the Statute of *Magna Charta*, c. 30. That the Sea shall be open for Merchants. *Rot. Parl.* 18 Ed. 3. nu. 10. 22 Ed. 3. nu. 8. 25 Ed. 3. nu. 22.

(b) And yet the Sheriff is not Judge, but the Suitors, 6 Co. 11. yet see 21 H. 6. 35. False

Judgment was assigned, because the Plaintiff was held before the Under-Sheriff, and not the Sheriff himself; and so *coram non Judice*.

(c) Note; The Writ, if for live Things, it is *cepit & abduxit*; if for dead Things, it is *cepit & asportavit*.

The King to the Sheriff, &c. W. and B. Executors of the Testament of C. have complained unto us, that E. and F. took and carried away Goods and Chattels which were of him the said C. to the Value of, &c. found under the Custody of them the said Executors at N. and other enormous Things to them did, to the hindering of the Execution of the aforesaid Testament: And therefore, &c. that we may hear no more, &c.

B And a Man may sue other Writs of Trespass upon the Case in the County before the Sheriff; and the Forms of the Writs are such:

The King to the Sheriff, &c. A. hath complained unto us, that whereas B. did deliver a hundred Sheep of his to the aforesaid A. to stay or be kept for one Year upon his Land and Pasture at N. under certain Conditions, the aforesaid B. took and carried away those Sheep, being there upon the Land of him the said A. within the Term aforesaid, without the Licence and Will of the same A. and other, &c. to the Damage, &c. By which Writ it appeareth, that he cannot take back the Cattle again, if the Plaintiff perform the Conditions.

C If a Man borrow a certain Sum of Money, and doth pawn Goods for the same, and he offereth the Money again unto the Party, and prayeth that the Pawn may be delivered back to him, and the other refuse to do it, he shall have an Action of Trespass upon the Case in the County before the Sheriff, to determine the Matter, &c.

D If a Man doth deliver unto another a Bull, or Oxen or (a) Cows, to make his Benefit of them for a certain Time upon Condition; if he, against the Will of him to whom they were delivered, take them back again within the Time, he shall have an Action of Trespass against him directed unto the Sheriff, to determine that Cause.

E If a Man do distrain Kine which are with Calf, and impound them against Law for so long Time that they cast their Calves, then he shall have a special Writ directed unto the Sheriff, rehearsing the special Matter, to end the same before the Sheriff in the County.

F And so if a Man have a Salt-pit by the Sea-coasts, and another erecteth a Wall betwixt the Sea and the Salt-pit, if the other Person throws down the Wall, by which the Sea-water overfloweth the Salt-pit, he shall have a special Writ directed unto the Sheriff, to end the Matter in the County.

G And so for every Manner of Trespass done, a Man may (b) chuse to have such a Writ directed unto the Sheriff, to end the Matter before him in the County, or to sue a Writ unto the Sheriff returnable in the Common Pleas or the King's Bench.

(a) Note; This special Writ, *Questus est nobis A. quod cum B. viginti oves, &c. liberasset, &c. pro'd' B. sine Licentia predicti A. oves illas infra Term' cepit & abduxit.* Register 92. For it is clear the Bailor in such Case cannot retake them within the Term. 2 Ed. 4. 13. 17 Ed. 2. 22. 1 H. 7. 15. And yet if he or his Donee takes them, the Bailee shall not have a general Writ of Trespass; for then he ought to recover Damages to the Value of the Beasts, against him who has the general Interest, which is not agreeable to Reason. See 11 H. 4. 24. adjudged; but

against a Stranger the Bailee shall have a general Writ of Trespass. See 11 H. 4. 17. 21 H. 7. 15. and shall recover Damages to the Value of the Beasts, because he is chargeable to the Bailor in Detinue. But if after the Taking the Bailor releases to the Trespassor, the Action *Per et Contra* remains as before; and yet on the Matter shewn, he shall recover Damages only for the Compeffuring, &c.

(b) So that it seems in a *Justitia* the Sheriff may proceed, though the Freehold comes in Debate. 6 H. 4. 2.

And if the Writ of Trespass be returnable, then the Writ shall be of another Form, for then these Words *Vi & Armis* (a) shall be in the Writ; and if it want those Words, the Writ shall abate, if they be not Writs of Trespass upon the Case; which Writs of Trespass shall not have these Words *Quare Vi & Armis* in the Writ, although they are returnable in the Common Pleas or King's Bench; and if they have the Words *Quare Vi & Armis* in the Writs, it shall be good Cause to abate the Writs. And the Form of a Writ returnable in the King's Bench is such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then put by Gages and safe Pledges B. that he be before us on the Morrow of All Souls, wheresoever we shall then be in England. And if it be returnable in the Common Pleas, then thus: Before our Justices at Westminster on the Morrow of All Souls, to shew (b) wherefore with Force and Arms he made an Assault upon him the said A. at N. and beat, wounded and ill treated him, so that his Life was despaired of, and other enormous Things to him did, to the great Damage of him the said A. and (c) against our Peace: And have there the Names of the Pledges and this Writ. Witnesses, &c.

And if a Man do imprison another, then the Form of the Writ of Trespass is, *To shew wherefore with Force and Arms he made an Assault upon him the said A. at N. and (d) wounded, imprisoned and ill treated him, and other, &c.*

And it is not material whether he be wounded or not, for the Form of the Writ is such; but the Damages shall be increased for the same, if he do recover. And if he do imprison him until he pay a Fine for his Deliverance, then the Form is, *Wherefore with Force and Arms he took, imprisoned and ill treated him the said A. at N. and detained him in Prison there (e) until he had made a Fine (for so much) with the said B. for the having his Delivery, and other enormous Things to him did, &c.*

And a Man may have one Writ of Trespass for divers Trespasses (f), *L* &c. as for breaking of his Close, cutting of his Trees, fishing in his Ponds, beating

2 H. 4. 13.
7 Ed. 6.
Dyer 70.
20 Ed. 3. 38.
per Thorpe.
21 H. 6. 59.

(a) But the *Causa causans*, or immediate Cause and Conveyance to an Action on the Case, may be laid *Vi & Armis*, 12 H. 4. 3. 8 R. 2. Action sur le Case, 29 Ed. 3. 20. 16 Ed. 4. 7. otherwise if it were only for Non-feasance, 43 Ed. 3. 39. See 2 Salk. 636.

(b) Note; If the Writ be, *Simul cum aliis Malefactorib' vi & armis, &c.* it shall abate; otherwise if it be *Simul cum aliis ignot.* 8 H. 5. 5.

(c) Note; If he counts of a Trespass done Part in another King's Time, and Part in the present King's Time, the Writ shall be, *Contra Pacem nup' Dom' Regis, &c. & Dom' Regis nunc, &c.* and it shall be good *reddendo singula singulis.* 21 H. 4. 15. And on a Writ *contra Pacem nostram* only, he shall not recover Damages for a Trespass done in the Time of another King. See 2 Salk. 640.

(d) Note well; A Justification for a Battery is no Justification for wounding, &c. 21 H. 6. 27.

(e) And if he justifies the Imprisonment, he need not answer to the Taking of the Fine, for it is but accessory; and therefore the Plaintiff ought to answer to the Justification of the Imprisonment, and not the Taking of the Fine. *Quere* 19 Ed. 3. 19.

Note; If one be taken in the County of G. and imprisoned till he makes Fine in the County of W. he may have this Writ in the County of G. 38 Ed. 3. 29.

(f) Yet for taking of a Hawk (reclaimed) he shall not have Trespass, but Trover and Conversion. *Quere* 2 Lev. 201. 1 Salk. 667, &c. and the Count ought to be that he is reclaimed; and it is not sufficient to say he was possessed of him as of his proper Goods. Dyer 306. Trespass *de Bonis asportatis* ought to alledge them to be *suis.* 13 H. 4. 11.

Note; In such a Writ the Defendant pleads, That as to a Pheasant, he found it in his own Ground,

beating of his Servants, and taking of his Goods and Chattels, and all in one Writ; and for cutting of his Wood, and for taking his young Hawks; and the Form of the Writ is, *Wherefore with Force and Arms he entered the Wood of him the said A. at N. and took and carried away three young ones of his Hawks of so much Price, lately building Nests in the same Wood, and other enormous Things, &c.*

And by this Writ it appeareth that the Property of the Hawks are in him who hath the Land by the Word (*suorum*) in the Writ. *Post. 89. E.*

M And for hunting in a Warren the Form is, *Wherefore he entered the Warren of him the said A. at N. and therein, without his Licence and Will, chased, and took and carried away (a) Hares, Conies, Pheasants and Partridges, (b) &c.* [87.]
34 H. 6. 38. 38 Ed. 3. 10. Post. 89. K.

A And if a Man hunt and take away another Man's Conies in his Close which is no Warren, then the Form of the Writ is, *Wherefore, &c. he broke the Close of him the said A. at N. and therein without his Licence and Will, chased, and took and carried away so many Conies (c) of so much Price, &c.* *43 Ed. 3. 13. Bro. Property 37.*

Ground, out of the Plaintiff's Warren, and he let his Faulcon flie at it, who followed it into the Warren, &c. and the Defendant followed his Hawk thither and took it; and it was ruled in a Manner by *Knivet*, That the Entring and Taking there was tortious. *38 Ed. 3. 10.* Otherwise if the Killing and Taking had not been in the Warren. *12 H. 8. 10.* See in Trespass *Quare vi & armis in Warrenam suam intravit.* It is no Plea in Bar that the Freehold of the Soil is in the Defendant. See *3 H. 6. 13. 5 H. 7. 10. 17 Ed. 4. 6. 10 H. 7. 25. 11 H. 6. 34. contra.*

Note this Diversity. 1. If one comes into a Chase, Forest or Warren, and drive the Beasts out of it, and he who drives out the Beasts, or any other who has Notice of it kills the Beasts, the Owner of the Forest, or his Officer may make fresh Pursuit, and thereon take or seize the dead Beast; for so long as he that killed it, had Notice, &c. the legal and local Property on the fresh Pursuit shall be said to continue. *12 H. 8. 10. adjudged.* 2. If a Beast of Forest, Chase, &c. comes by Escape into my Land, I may kill him on my own Ground without forestalling him, and the same is not punishable. *12 H. 8. 12. 21 H. 7. 30.* provided it be not an Hart proclaimed. *7 H. 6. 36.* 3. If Beasts of Chase come by Escape into my Land, which is a convenient Distance from the Park, I may chase them with Greyhounds; and if the Greyhounds follow them towards the Park, and I

keep them out, and the Greyhounds kill them, I may now take them, and am not punishable; otherwise if the Lands are not a convenient Distance. *18 H. 6. 22. 43 Ed. 3. 8.*

Note; In Trespass for entering into a Park, Warren, &c. it is no Plea to say it is no Park or Warren, but he must plead *Non cul'*, and give the Matter in Evidence. *10 H. 6. 16. 19 H. 8. 9.* and therefore it is held clearly, that if one has a Warren, if he inclose or impark without the King's Licence, and another hunts there, and he brings Trespass *de Parco facto*, the other may plead *Non cul'*, and give this Matter in Evidence; for none may have a Park without the King's Grant, or by Prescription. *Note* also; The Plaintiff in this Writ does not make any Title to the Park in his Count, and therefore it is no Plea, that he had no Park by Prescription or Licence. For how can Judgment be given on a Title where none is alledged. *18 H. 6. 21.*

(a) *Note*; He shall not say *Lepores suos*, for he has not the real Property in them, but only a Property *Causa Warrenæ*, and only during the Time they are in the Warren. *3 H. 6. 55.*

(b) And he shall shew in his Count the certain Quantity (or Number) of the Things, but he shall not say *pretio* (or of what Value) *Quare*, *30 Ed. 3. 10.* for it is only (*Fugavit*) in this Writ

(c) *Note*; He shall not have Trespass for the Conies only. *43 Ed. 3. 24.*

3 H. 6. 53. ac.
5 H. 5. 2.
22 H. 6. 59.

And by this Writ it appeareth, that he who hath the Land hath no Property in the Conies. And so of a Park; *Wherefore, &c. (a) he broke the Park of him the said A. at N. and in it, &c. chased, and took and carried away the wild Beasts. Or thus; Wherefore, &c. the Herbage of him the said A. at N. lately growing, or the Corn of him the said A. at N. lately growing, to the Value of ten Pounds, with certain Cattle he fed, (b) trod down and consumed, and other, &c. And he need not say in the Writ, Wherefore he broke the Close, &c. and the Herbage, &c.*

And there is another Form of Writ of Trespass, *Of digging the Soil and B carrying away the Sea Coal. And another Form of Writ in the Register, Of C his Horse and Cattle arrested without Cause, until he shall make a Fine.*

And another Form, *Of his House broke and Timber carried away.*

And the Writ of Trespass for Executors for Goods taken out of their Possession, which is such: D E

The King, &c. If A. and B. Executors of the Testament of C. shall make you secure, &c. then put, &c. wherefore he took and carried away four Oxen, which were his the said C.'s, of the Price of one hundred Shillings, found in the Custody of them the said Executors at N. and mowed the Corn of him the said C. there growing, and took and carried away the same Corn, and other Goods and Chattels of the same C. found there in the Custody of the same Executors, and other enormous Things to them did, to the delaying of the Execution of the Will aforesaid, and against our Peace.

And if an Abbot and his Monks break the Seal of any Writing which they have made to another Person, the Party shall have a Writ of Trespass against them in such Form: F

The King, &c. If A. shall make you secure, &c. then put the Abbot of C. and I. and D. Co-Monks of the same Abbot, &c. wherefore, &c. a certain Writing of him the said A. sealed with the common Seal of the aforesaid House, by which the same Abbot and Convent were bound to the aforesaid A. to find her in Viſuals and Cloathing and in all her Necessaries, until the same Abbot and Convent should marry her the said A. to some Man having twenty Pounds of Land or Rent, found at L. they maliciously broke, and other, &c.

And also a Man may have a Writ of Trespass for fishing in his several Pifcary, and for cutting of his Grass, and for plowing of his Land, or for shearing of his Sheep, and all in one Writ. G

And another Form of Writ for mowing of his Corn, and cutting of his Grass, and felling of his Woods, and eating of his Corn and Pastures, and all in one Writ.

And also another Writ of Trespass made unto a Woman before (c) Cover-H If
ture, which is such:

(a) *Note*; The Defendant ought to answer to the Breaking of the Park; as also to the Driving or Chasing. 20 H. 6. 37. *West. 1. c. 20.* and the Plaintiff shall recover for the entering into the Park, tho' the Defendant does not hunt, if he came for that or other ill Purpose. 5 H. 5. 1.

Note; The Plaintiff shall not have Judgment according to the Statute, if he does not bring a special Writ according to the Statute, and not a

general Writ. 9 H. 6. 2. 47 *Ed. 3. 10.* adjudged.

(b) *And Note*; He has only a local Property, and it is void without a special Custom to the contrary. If Beasts of Chase or Forest go out of the Bounds of the Forest, he in whole Lands they are may kill them, except a Hart proclaimed. 7 H. 6. 36. 21 H. 7. 30. 43 *Ed. 3. 8.*

(c) *Note*; This Writ does not suppose a *dum sola,*

If A. and B. his Wife shall make you secure, &c. then put, &c. wherefore, &c. he broke a certain Chest of her the said B. found at N. and took and carried away a certain Writing obligatory found in the same Chest, &c. and other, &c. to the great Damage of them the said A. and B. and against our Peace.

I And another Writ in the Register, Of taking away a Ship, and carrying away the Chattels.

K And another Writ, Of Corn and Grass of Vineyards fed, &c. And another Writ, Of Corn and Grass of Coppices fed, &c.

L And another Writ, Of a Pool broken, thus; Wherefore, &c. he maliciously broke a certain Pool at R. by which the Water running from the same Pool overflowed the Fish-pond of him the said A. insomuch, that by the Course of that Water and the Inundation aforesaid, the Fish then being in the same Fish-pond to the Value of one hundred Marks, issued thereout; and other, &c.

By which it appeareth, that he shall have a Writ of Trespass *Vi & Armis*, because he causeth the Water to run out of his Pond, by which the Fish there go away.

M And there is another Writ, *De Equis abductis*, and Goods and Chattels unto the Value of five Pounds and one hundred Shillings, of Money in Money told, *ibidem invent' cepit, &c.*

N And there is another Writ of Trespass against those who lie near the Plaintiff's House, and will not suffer his Servants to go into the House, nor the Servants who are in the House to come out thereof; and for taking and impounding his Cattle, and not suffering him to sue a Replevin, &c. And the Form of the Writ is such:

The King, &c. If, &c. put, &c. wherefore with Force and Arms they beset the House of him the said A. at H. and his Men and Servants, being out of the said House, would not permit to enter the same House to do therein for the Service and Profit of him the said A. and certain others his Men and Servants, being therein, would not permit to go out of the same House to the Land of him the said A. there to till it, by which one hundred Acres of Land of him the said A. remained un- [88.
tilled, and the same A. for a long Time hath lost the Profits of his Land aforesaid, to the Value of twenty Pounds, and his Service of the same Men and Servants; and also impounded there the Beasts of him the said A. and detained them there impounded, not permitting them to be replevied to the same A. according to the Law and Custom of our Kingdom; and other enormous Things to him did, &c.

A And there is another Writ of an House broke, and Prisoner taken away: thus:

Wherefore with Force and Arms they broke the House of him the said A. at N. in which the same A. (a) detained one H. of C. a Scot, taken by him in War as his Prisoner, until he should be satisfied of one hundred Pounds, for which the same

sola, but the Count does, 21 H. 6. 30. 7 H. 7. 2. Dyer 105. but if it be of a Battery of the Wife before the Coverture, the Bill or Writ shall be *dum sola*. See 22 Aff. 87. and the Verdict may find all Guilty, where one only beats, &c.

(a) Note; If this Writ be *Bona & Catalla*, he may not count of one live Thing, as a Horse, &c. but ought to have a special Writ, 10 H. 6. 22. yet shall not abate for Variance of the Count;

per Paston. See 21 H. 6. 29. If the Writ be *Bona & Catalla*, and he counts of Pikes or Tenches, Horses or Cows, the Writ shall abate, for they shall be intended living: Therefore the Writ for these ought to be special, *viz. Equos, vaccas, &c.*

Note; Where the Writ was *de Bonis & Catallis*, it concluded *ad Valenciam*; as 3 Ed. quos *Pretii, &c.* 21 H. 6. 39. Dyer 121.

II. made his Ransom with the aforesaid A. for saving his Life, and took and carried away him the said H. and other enormous Things, &c.

7 & 3 P. & Ma.
Dyer 121.

And note, That the Form of the Writ for a live Thing, as Horses or Men, B or such like, is to say, *Ceperunt & abduxerunt*; and for a dead Thing, to say, *Ceperunt & asportaver'*, &c.

And there is another Writ of Trespass; if a Man take another and imprison C him until he make Oath that he will not trouble nor imprison him for a Trespass done to him before, or imprison him until he hath made unto him a Release of all Actions.

And if a Man taketh his Villain and puts him into the Stocks, and others D come and break the Stocks, and let him out, he shall have an Action of Trespass, and the Form is,

Wherefore when he the said R. took S. his Villain and Fugitive in his Manor at K. and there put him in the Stocks to chastise him, as it was lawful for him to do, because he was not justifiable to him the said R. the aforesaid, &c. with Force and Arms broke the Stocks aforesaid, and took and led away him the said S.

Post. 89. M.

There is another Form of Writ, thus: *Wherefore with Force and Arms, &c. E he filled a certain Ditch in L. with Earth and Mud, that the Water issuing from the Ditch aforesaid overflowed the Corn of him the said W. being in Sheaves in his Barn there, by which his Corn aforesaid, to the Value of one hundred Shillings, was putrified, and plucked up by the Roots his Trees there lately growing, to the Value of forty Shillings, and with certain Beasts fed, trod down and consumed his Corn there lately growing, to the Value of forty Shillings, &c.*

And by the first of these Writs appeareth, that that is an Action of Trespass upon the Case, and the Residue a common Action of Trespass.

And if a Man draw Wine out of the Vessels, and put Water in the same F to fill them up again, he shall have an Action of Trespass in this Form:

Wherefore with Force and Arms, &c. he drew out sixty Flagons of a certain Tun of Wine of him the said A. of the Price of four Pounds, put in the Ship of the aforesaid I. at S. to be brought from thence to S. and filled up that Tun with Sea Water, so that the Residue of the Wine aforesaid became corrupted, and wholly perished; and other, &c.

3 H. 4. 12. b.
& infra H.

And another Writ of the Fish of his Piscary, and Herb fed up, and Land G digged, thus:

Wherefore with Force, &c. he fished in the free Fishery of him the said A. at N. and cut down his Grass there lately growing, and likewise dug in his Land there, and took and carried away the Earth there cast up, and the aforesaid Grass and the Fish (a) of the Fishery aforesaid, to the Value of one hundred Shillings, &c.

7 H. 7. 13.
supra G.

(b) And it appeareth here, that there are divers Manners of Forms of fish- H ing in his Fish-pool: One Writ is, *Wherefore, &c. he fished in his Fisheries, &c.*

(a) Though the Writ be *Piscem*, he may count of more Fishes; for the Word *Piscis* is *Nomen collectivum*. 4 H. 6. 11.

(b) Note; In Trespass for fishing in his several Fishery, *liberum Tenementum* is a good Plea, but he cannot conclude Judgment *si Actio* without Title shewn. For in Trespass the Thing itself is not in Demand, as it is in Assise, or *Quod permittat*. 24 H. 6. 43. 20 H. 6. 40. See

17 Ed. 4. 6. 18 Ed. 4. 4. 10 H. 7. 24, 27. and yet he cannot have a several Piscary in another's Soil, as well as a free Piscary by a special Title. 7 H. 7. 13. 20 H. 6. 4.

Also Note, That he who has *liberam Piscariam* may have Trespass against a Stranger; for he has more than Common of Piscary. 17 Ed. 4. 7. 7 H. 7. 13.

Another Writ is, *Wherefore, &c. he fished in the several Fishery of him the said A. &c.* And the third Writ is as before, *Wherefore he fished in the free Fishery of him the said A. at N. &c.*

I And a Man shall have a Writ of Trespass for breaking of his House, and cutting of his Trees, and for fishing in his Ponds, and for taking of his Goods and Chattels, and for taking of his Plough-cattle, and impounding of them, and for taking of his Doves out of his Dove-house; and the Form is such:

Wherefore, &c. he broke the Houses of him the said A. at N. and cut down his Trees there lately growing, and fished in his Fish-ponds there, and took and carried away the Fish thereof and the Trees aforesaid, and there took and impounded his Beasts of his Plough, and detained them so long Time impounded, that forty Acres of Land of the same A. for a great while remained untilled, and took and carried away the Doves of his Dove-cote there, with Nets and other Engines, whereby the same A. wholly lost a Flight of his Dove-cote; and other, &c.

And by this Writ it (a) appeareth, that a Man shall have an Action of Trespass for taking of his Plough-cattle, and shall join the same in a common Action of Trespass with other Trespassers; and also that he shall have an Action for taking of his Doves.

K And a Man may have a Writ *Of his Clofe broke, and of his Corn in Sheaves, and Hay, to the Value of one hundred Shillings, fed, &c. or of eating of his Hay only, &c.* Or, *Wherefore he mowed down and carried away the Reed of him the said R. to the Value of one hundred Shillings, at N. lately growing.*

L Another, *Wherefore, &c. he broke the Mill-stone of him the said Prior, of the Price of forty Shillings, at N. and the Goods and Chattels, &c.*

M And by this it appeareth, that if it be a live Thing or dead Thing for which the Action is brought, it is not material whether he say, *of the Price, &c. or to the Value, &c. (b).*

And another Writ of a Mill-pool broken in two Towns, thus:

Wherefore, &c. he broke the Mill-pool of him the said R. of B. at R. and S. by which the Water of the same Pool wholly run out, and he the said R. lost the Profit of his Mill aforesaid, to the Value of one hundred Shillings; and his Goods and Chattels, &c.

N And another Writ, *Of Houses and Chattels burnt.*

O And another Writ, *Of his Sheep shorn and the Wool carried away.*

Supra 37. G
39 Ed. 3. 20
C 5. Part. 28.
in Trespass the
Defendant as
to one Thing
justified, and
pleaded Not
guilty to ano-
ther, and the
Jury found
one Issue, and
taxed Damages
intirely.
22 Eliz.
Dyer 369.
2 & 3 Ma.
Dyer 221.
17 Ed. 3. ac.

(a) See *per Hankf.* If a Writ of Trespass be *ad valent*, &c. the Plaintiff shall recover the Value of the Goods, and the Jury shall be charged to inquire of the Value; and therefore it is a good Plea to say that the Plaintiff is possessed of the Beasts; for the Writ ought to be, that the Defendant had taken and detained his Beasts *Sine Causa rationabili*, *per Hankf. sed Culp' contr'*, and that it shall be given in Evidence, that the Plaintiff is seised of the Goods in Mitigation of the Damages, 11 H. 4. 24, 25. and agreeing with this Opinion of Culp. that

the Plaintiff shall have a general Writ, and that it shall not abate, but the Matter be given in Evidence. See 1 H. 6. 7. 12 H. 6. 6. 19 H. 6. 34. 21 H. 6. 15. 7 H. 6. 27. *Trespass quare quinque Boves apud D. cepit & fugavit & imparcavit, &c. per quod tres de bovib' pretii 5 l. fame interierunt, & alii deteriorati sunt ad dampnum, &c.* and it was abated, because the Value of all the Beasts was not shewn; *contra* if it had been *fugavit & imparcavit*, but not *cepit*. 1 H. 5. 3.

(b) See 2 H. 4. 11. *per Markkam.*

[89.]

And another for taking him and imprisoning him in one Place, and from thence carrying of him to Prison in another Place, and there detaining him in Prison.

And another Writ for taking of his Sheep in one Place, and impounding of A them in another Place, until he hath paid a Fine.

And another Writ for breaking of his Sluices, in such Manner: B

Wherefore, &c. they broke the Sluice of the Mill-pool of him the said Abbot, and his Park there at S. and in it, without Licence, &c. and (a) his Trees, &c. and in his several Fishery, &c. and took the Fish thereof and the Trees aforesaid, to the Value of one hundred Shillings, and also the wild Beasts of the said Park.

Another Writ, *Wherefore with Force and Arms, &c. he broke the Sluices of C him the said A beyond the Ditch of N. for the Safety of his Lands at C. and cut the Timber thereof, to the Value of one hundred Shillings, into small Pieces, so that by such Breaking, the Lands and Meadows of him the said A. were there overflowed, and the same A. wholly lost the Profit of the Lands and Meadows aforesaid, to the Value 100s. and other, &c.*

And another Writ: If a Man doth imprison his Villain, and set him in the D Stocks for some Offence, and another Man doth set him at large, the Lord shall have an Action of Trespass for breaking up the Stocks, and for setting his Villain at large.

See 91. K.

And another Writ: If a Man be riding on the Way, and another Man stri- E keth his Horse, by which the Rider falleth and is hurt; he which is cast off his Horse shall have Trespass against the other.

And another Writ for putting out another Man's Eye, thus: *Wherefore with F Force and Arms he thrust out the right Eye of him the said W. at N. and other, &c.*

And the Master of an Hospital shall have an Action of Trespass for taking G of Goods in the Time of his Predecessor; and the Form of the Writ is such: *The King, &c. If W. of S. Master of the Hospital of Saint Michael of C. shall make you secure, &c. then put, &c. wherefore with Force and Arms he took and carried away the Goods (b) and Chattels of the aforesaid Hospital, to the Value of one hundred Shillings, found at R. in the Time of I. of C. lately Master of the Hospital aforesaid, Predecessor of the aforesaid Master.*

And the like Writ for an Abbot or Prior, and in the End of the Writ he H: shall say, *To the Prejudice of the House and Church of him the said Abbot.* And so it seemeth it shall be in the End of the Writ for an Hospital.

And another Writ for an Abbot, thus: *Wherefore with Force and Arms he broke the Gates and Houses of the House and Church of him the said Abbot at L. and with certain Beasts fed, tread down and consumed the Corn of the House and Church aforesaid, in the Time of the Abbot aforesaid, there growing, to the Value, &c. and took, &c. the Goods and Chattels of the same House and Church in the Time aforesaid, to the Value of one hundred Shillings, there found; and other, &c. (c).*

(a) See for Justification in Trespass *de arborib' suis*, 13 H. 7. 9. And note; If he justifies the Cutting, he shall not answer the Carrying away; for if he did not cut them, the Writ ought to be *quare lona & catalla cepit*. 33 H. 5. 12. Kelw. 114. 10 H. 4. 1. 5 H. 5. 8.

(b) Note *Prædict' hospitalis*, but not so *de Curia & Ecclesia*. 9 H. 6. 25. *Vel præd' I.* or if the Predecessor himself had brought the Writ, it should be *bona & catalla ipsius I.* See

accordant 18 Ed. 2. 3. 47 Ed. 3. 23. 9 Ed. 4. 33 and so of a Replevin brought at Common Law 16 Ed. 3. *Trespass* 211. And so it is of Waste *ad exhæredationem Domus & Ecclesiæ de B.* See 7 H. 6. 18.

(c) But when such Trespass is done to the Predecessor. See 13 Ed. 4. 16. 4 Ed. 4. 3. *contra* 2 H. 4. 4. the Writ being *arbores Domus & Ecclesiæ de B.* See 18 Ed. 2. *Trespass* 237.

- I** And another Writ for a Trespass done in the Time of Vacation of an Abby or Hospital; *Wherefore with Force and Arms he took and carried away the Goods and Chattels of the House and Church of the Abbot of C. (a) in the Time of the Vacation of the Abby aforesaid, to the Value of one hundred Shillings, found at L. &c. and other, &c. to the Prejudice, &c. and against the Peace, &c.*
- K** And another Writ of Trespass; *Wherefore with Force and Arms he entered the Warren of him the said A. at C. and chased in it, &c. and likewise entered his Wood there, and three young ones of his Hawks nestling in the same Wood, of the Price of twenty Shillings, and other his Goods and Chattels, to the Value of one hundred Shillings, there found, and also Hares, Conies and Partridges in the Warren took, &c.*
- L** (b) And another Writ of Trespass; *Wherefore with Force and Arms he chased one hundred Sheep of him the said A. found at T. with certain Dogs, inciting those Dogs to bite the Sheep aforesaid, insomuch that by the chasing and biting of the Dogs aforesaid the said Sheep were much worse, and a great Part of the Births of those Sheep made abortive, and made an Assault upon T. his Serjeant there, &c. by which, &c.*
 And another Writ, *Of Swine chased, so that they died, &c.*
 And if a Man do incite or procure his Dog to bite any Man, he shall have an Action of Trespass for the same.
- M** And if a Man fill a Ditch with Mud and Earth, which had used to be a Watercourse, for which another Man's Land is drowned, &c. he shall have a Writ of Trespass; *Wherefore with Force and Arms he filled a certain Ditch at T. through which a certain Water runs there, with Earth and Mud, insomuch that the Water being hindered of its ancient Course, overflowed twenty Acres of Land of him the said A. there sowed with divers Kinds of Grain, by which he the said A. wholly lost the Profit of his Land aforesaid; and other Wrongs, &c.*
- N** And if a Man distrain Cattle, and carrieth them into unknown Places, the Party shall have an Action of Trespass *Quare vi & armis* for the distraining of them; and the Writ is such:
Wherefore with Force and Arms he took the Beasts of him the said A. at N. and chased them to Places unknown, so that those Beasts could not be replevied to him the said A. according to the Law and Custom of our Realm; and other, &c.
- O** There are divers Writs of Trespass founded upon Statutes, whereof some do follow (c).
The King, &c. If A. &c. then attach B. &c. that he be before us, &c. to answer the aforesaid A. wherefore with Force and Arms he ravished C. the Wife of the aforesaid A. at N. and carried her away, with the Goods and Chattels of the aforesaid A. to the Value of one hundred Marks, and yet detains her from him; and other, &c. to the great Damage, &c. (d) against the Form of the Statute in such Case provided, &c. Witness, &c.

(a) See when on a Vacation by Deposition, in the Time of *Ed. 1. Trespass* 242. the Bishop shall not punish Trespass on the Temporalities, but the King. 38 *Ed. 3.* 30. *Fide* accordant 39 *Ed. 3.* 19.

(b) If my Dog kills your Sheep, and I freshly after the Fact tender you the Dog you are without Remedy. 7 *Ed. 3. Barr.* 290.

(c) Note; The Action is to commence with an Attachment, and not with a *Fine per vocat.* 14 H. 6. 2. See the Stat. of *West 2 c. 38.*

(d) Note; The Party shall not have the Punishment enjoined by the Stat. but where he is sued by a Writ that make mention of the Statute. 9 H. 6. 2. *Fide infra A.*

Ant. 69. I.

Another Writ; *Wherefore with Force and Arms he took the Beasts of him the said A. at N. in your County, and chased them from that County into the County of Kent, and impounded and there detained them impounded, contrary to the Law (a) and Custom of our Realm and against our Peace: And have there, &c.*

[90.]

Another Writ of Trespass, (b) that Distresses, &c. be not out of the Fee, or A in the King's Way, thus: *If A. shall make you secure, &c. then put, &c. that he be, &c. before, &c. to shew wherefore, seeing that it is provided by the Common Council of our Realm, that none may make Distresses out of his Fee for any Cause whatsoever, neither in the (c) King's Way or common Street, except those having special Authority for this Purpose of us and our Ministers, the aforesaid B. who is not our Minister, as it is said, out of his Fee at N. the Beasts of him the said A. contrary to the Form of the Provision aforesaid, &c. And have, &c.* Otherwise in the Highway, thus: *The Beasts or (d) Goods and Chattels of him the said A. in the King's Way took and impounded, and yet (e) detains them impounded against the Law and Custom of our Realm, &c. and against our Peace. Or thus: And detained the Beasts aforesaid a long Time impounded, against the Law, &c. and against our Peace, &c. And have, &c. And in the mean time cause those Beasts to be delivered to him the said A. Witnesses, &c.*

Another Writ of Trespass against him who distraineth a Man by (f) his Plough-cattle, or by his Sheep: *To shew wherefore, seeing that it is appointed for the common Profit of our Realm, that no Man of the same Realm may be distrained by the Beasts of his Plough, or by his Sheep, for our or another's Debt, or on other Occasion whatsoever, by our or another's Bailiffs or Ministers, so long as he hath other Beasts by which reasonable Distress may be made upon him for levying those Debts, except only those Beasts which are found doing Damage to any one happen to be impounded according to the Law and Custom of our Realm; the aforesaid W. (g) took and impounded the Sheep of the aforesaid A. at N. or the Beasts of*

(a) Note; This Writ lies against a Lord. 3 Ed. 3. 5. adjudged. But if A. holds an Acre, &c. in one County of a Manor in another County, the Lord may distrain in the said Acre, and carry the Distress into the other County. 1 H. 6. 3. per Cur. 22 Ed. 4. 11. *Quare*, 18 H. 7. *Kilow*. 50. 14 Ed. 3. *Barr*. 275.

Note; In Trespass for a Distress taken and driven into another County against A. and B. A. pleads Not guilty, and B. says that he is Bailiff of J. S. of whom the Plaintiff holds, &c. And for Services arrear he distrained, and drove into another Place within the same County, without doing any Thing against the Peace, and tenders to aver his Plea. And resolved, 1. That the Defendant here need not make an Avowry, for he shall not make a Return here, for the Writ does not command the Sheriff to make Deliverance. 2. That the Issue shall be tried in the County where the Taking was, and not where the Driving is supposed, for there they cannot take Conscience, whether they were the same Beasts that were taken in the other County. P. 13 Ed. 3.

(b) But note; The Party grieved shall not have Advantage of the Statute of *Marlb. c. 35.* except by a special Writ founded on the Statute, and not by a general Writ of Trespass. 43 Ed. 3. 30. *Temp. Ed. 1. Avowry* 130. 11 R. 2. *Avowry* 87. 4 H. 6. 2. per *Bab. contr. Martyn*, 9 H. 6. 2. *Ratio* because in a special Writ the Party makes a Fine to the King. 8 Co. 60. *Beecher*.

(c) One may distrain *in via Regia* for an Amercement in a Leet. *Temp. E. 1. Avowry* 232. 19 Ed. 2. *ibid.* 221, 225.

(d) Without saying *pretii* in the Writ, but it must be in the Count. 19 Ed. 3. *Brief* 842. Note the Reason, because they are taken *nomine districtionis*, and see there *contra pacem* omitted.

(e) See 39 Ed. 3. 20. *Detinuit quousque Finem fecit*, held good.

(f) See this Writ lies where the Rent is arrear. *Temp. Ed. 1. Avowry* 230.

(g) Note; The Writ lies between Lord and Tenant, and although the Tenant pays his Rent and has Deliverance, he shall have this Writ. 18 Ed. 2. *Action sur Stat.* 35. And note; if at

of him the said A. of his Plough at N. against the Form of the Statute aforesaid, and yet detains them there impounded against the Law and Custom, &c. and against the Peace, &c. And have, &c. And in the mean time cause those Beasts to be delivered to him the said A. Witness, &c.

And so note, that in this Writ of Trespass the Sheriff shall make Deliverance unto the Party, as he shall do upon a Replevin: And if the Party hath the Beasts delivered unto him before the Writ sued, then this Clause, *Cause those Beasts in the mean time to be delivered to him the said A.* shall not be in the Writ.

C Another Writ: If a Man doth take the Oxen or Carts of another, or other Things, as Barges or Ships to carry Goods, against the Will of the Owner, then he shall have such Writ:

The King to the Sheriff, &c. If, &c. put, &c. to shew wherefore, seeing that in the Statute lately made at Westminster, amongst other Things it is contained, that none take Horses, Oxen, Wains, Carts, Ships and Boats for Carriage, against the Will of him whose Goods they are, the aforesaid B. and D. with Force and Arms took, and for a long Time detained, a certain Cart and four Horses for Carriage of the aforesaid A. found at N. against the Will of him the said A. and other Wrongs, &c. to the great Damage, &c. and contrary to the Form of the Statute aforesaid, and against our Peace: And have there, &c.

D Executors shall have such Writ of Trespass for Goods and Chattels taken in the Life of the Testator.

E And if a Man do distrain out of his Fee, he who is distrained shall have an Action of Trespass against him; and in the End of the Writ there shall be this Clause, *And cause those Beasts in the mean time to be delivered to him the said A. &c.* And by that Writ the Sheriff shall deliver the Cattle to the Party, as in a Replevin.

F If a Man cast any Thing upon the Feet of another, by which he is hurt, he shall have an Action of Trespass for the same.

G If a Man take a Canon or Monk out of the Monastery, the Abbot or Prior shall have an Action of Trespass thereupon, thus:

Wherefore with Force and Arms he broke a certain House within the Priory of B. which is a Cell of the same Abbot, wherein Friar I. Canon of the same Abbot, was put for an Offence against the Rule of his Order, into which he fell, to be chastised according to the Rule of the said Order, and took and led away the aforesaid I. and other, &c. Or thus: Wherefore, &c. he broke the Close of him the said Abbot at L. and Friar W. of L. Canon, &c. who was detained in Prison within the Close aforesaid, to be chastised according to the Rule of his Order, drew out and led away from the same Prison; and other, &c.

at the Time he takes the Distress, he cannot find other Distress, but only Sheep, &c. altho' he could (not) have distrained before the Distress is cognizable, (*viz.* If he hath a Seigniorie, &c. and so cause to distrain) whereupon they were at Issue, whether he could find sufficient Distress on the Tenements. 29 Ed. 3. 17. But note; The

Count may be general as the Writ is, *viz. contra formam Statuti*, and need not alledge that *nulla alia rationalis Districtio inveniri potuit*, but that shall come on the other Side, and it is supplied by the *contra formam Statuti*. Dyer 312.

Writ of Trespass.

(a) And a Man shall have an Action of Trespass for taking his Son and Heir, 11
or his Daughter and Heir, and marrying her; and the Writ is such:

12 H. 4. 16.

If R. shall make you secure, &c. then put, &c. W. and B. that they be, &c. wherefore with Force, &c. they ravished, married and led away John or Joan (as the Case is) Son or Daughter and Heir of the aforesaid R. found at I. and other, &c. b).

And the King shall have an Action of Trespass for taking of his Goods; 1
and the Writ is such:

Wherefore with Force and Arms our Goods and Chattels, to the Value of, &c. and other Injuries there committed, in Contempt and to the great Damage of us, &c. and against our Peace.

And for such Trespass done upon the Soil and Possession of the King, the Use is for to have an Information of Intrusion for the King in the Exchequer, and the Defendant there to answer it. And when he appeareth in the Exchequer, the Course is there to bind him in Recognizance at his Peril to leave the Possession to the King; and yet it seemeth the King may have an Action of Trespass, *Wherefore he broke the Close, &c. and fed up the Herbage, &c. and cut the Trees, &c.*

And there are other Writs of Trespass, *Wherefore they broke the Hedges and K Ditches of him the said A. &c.*

And another Writ for digging in his Land, and for putting of Lime and Hemp in the Ditches, by which the Water is corrupted; and the Writ is,

[91.]

Wherefore, &c. he digged in the several Soil of him the said A. at N. and the Earth cast from thence threw into his Ditches there, and put Lime and Hemp in the same Ditches, by which the Water being in the Ditches became so infected by the Corruption of the Lime and Hemp aforesaid, that the Fish in the same Ditches to the Value of, &c. died; and other, &c.

And another Writ of Trespass for assaulting a Man in his House, and lying A in wait for him, until he make Oath that he will not bring any Action against him, &c. and the Writ is such:

Wherefore upon him the said I. &c. and pursued him the said I. into a certain House, to which he there fled for saving his Life, and besieged him therein for a long Time, and detained him so besieged until he made his Corporal Oath, that he would not move any Action against him, &c. by reason of the Trespass aforesaid, or for any other Matter whatsoever, &c.

(a) The Declaration may be *de raptu-Custodia*, as well as *de raptu heredis*. Palm. 75. *Banfield versus Hutchins*. Also it may be without saying *cujus Matrimonium ad ipsum pertinet*. 12 H. 4. 16. *contr.* 32 Ed. 3. *Gard.* 329.

See 21 H. 6. 15. the Father commits his Son of the Age of one Year to a Nurse, and goes out of the Country, and it is reported about the Country that he is dead; and for that the In-

fant was ill kept, the Uncle takes him, and retires to the Father, when he shall not be punished for this Taking. And Note; he is named Heir in the Life of the Father. 31 Ed. 3. *Brew.* 327.

(b) And he shall recover the Value of the Marriage. 12 H. 4. 16. And Note 3 *Cre.* 55. *Gray* and *Jefferies's Case*. See 29 *Aff.* 35. 21 H. 6. 24. *Dyer* 304. *Post* 140. F. 143. R.

- B** And if a Man have Waif and Stray within his Manor by Prescription, and another Man taketh the Waif or Stray out of the Manor, &c. he who hath the Manor shall have an Action of Trespass for them, &c. and that without any Seizure of them before (a).
- C** And if a Man take another Man and imprison him, and compel him to make to him a Statute-merchant, or a Release, or an Acquittance, he shall have an Action of Trespass for the same, and the Writ shall recite the Matter, and the detaining in Prison of him, *quousque*, &c.
- D** If a Man have a Wreck by Prescription, or by the King's (b) Grant, &c. if Goods be wrecked upon his Lands, and another taketh them away, he who hath the Wreck shall have an Action of Trespass, (c) *Quare vi & armis*, for thus taking, without Seizure thereof before; and the Writ is such:
- To shew wherefore, seeing that the said Th. is Lord of the Manor of Eston Bavent, and ought to have there, and he and his Ancestors, Lords of the Manor aforesaid, from Time out of Mind hitherto have been accustomed to have Wreck of the Sea within the Precinct of the Manor aforesaid, the aforesaid Joice and Robert with Force and Arms took and carried away Goods and Chattels to the Value of one hundred Shillings, cast upon the Land at S. within the Precinct of the same Manor, which ought to belong to him the said Th. as Wreck, &c. Or thus: Ten Pounds in Money, &c. Or, Wherefore, seeing that by Charter, &c. ought to have, &c.*
- E** If a Man send his Servant to apprehend his Villain, and to bring him unto him, and the Servant apprehendeth the Villain, and in bringing him unto his Master another rescueth him from the Servant, and lets him go at large; the Master shall have an Action of Trespass for this Rescous, and not the Servant, for the Wrong is done unto the Master, &c.
- F** If an Abbot or other Man hath a Hundred, and hath all Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the Goods of the Felon within the Hundred, he who hath the Hundred, and such Liberty, shall have an Action of Trespass against the Sheriff for the Goods which the Sheriff took, and the same shall be *Quare vi & armis*, &c.
- G** (d) And if an Abbot or other Person ought to have Toll in any Place, and sendeth his Servant to take the Toll, and another doth disturb his Servant to take the Toll; the Abbot, or he who ought to have the Toll, shall have a general Action of Trespass, *Quare vi & armis* they did assault his Servant, and disturbed him to take the Toll. And the Writ is such:

(a) See 43 Ed. 3. 8. 10 H. 6. 11. And Note Dyer 338. A Waif happens in one Franchise, and escapes into another Franchise before Seizure, the second Lord shall have it, for the Property is not changed before the Seizure, by the better Opinion. 12 H. 8. 10. See 33 H. 8. Estry 11. 7 Ed. 4. 10.

(b) That it is so in the King's Case, see 14 Ed. 2. Trespass 326.

(c) See the like Writ maintained without Title made, (And Note there it is an Action on the Case.) 13 Ed. 3. Brief 647.

(d) But Note; In this Case it seems, that the Name of the Buyer, as also of the Thing sold, for which the Toll is due, ought to be shewn in the County. *Quare*. 9 H. 6. 45.

Wherefore, seeing that the same Abbot, by the Charters of our Progenitors aforesaid, formerly Kings of England, ought to have Toll of Things set to Sale at the Town of S. coming there, they the said R. and I. with Force and Arms made an Assault upon S. the Servant of him the said Abbot, by him deputed to collect such Toll in the Town aforesaid, and hindered him, so that he could not collect and receive such Toll, and took from the said S. certain Chattels there taken and attached by him the said S. in the Name of a Distress for such Toll, whereby the said Abbot hath for a long Time lost the Profits coming of such Toll; and other, &c.

And so if a Man ought to have Toll in a Fair, &c. and his Servants are **H** disturbed to gather the same, he shall have the like Action for Assault (a) of his Servants, and for the Loss of their Service, and for the Disturbance made **Vide** 1 H. 5. 1. **47** Ed. 3. 22. unto them, and for losing the Profit of his Toll, and all in one Writ.

And if a Man have a Fold in common with two other Men, and the one do disturb him to set up his Clays and Pales, and break them, he shall have an Action of Trespass against them in this Form, *Quare vi & armis*, thus:

If the Priorefs of T. shall make you secure, &c. then put, &c. E. &c. to shew wherefore, seeing that the same Priorefs ought to have a certain Fold at F. together with the aforesaid E. and M. of B. and she the said Priorefs and her Predecessors from Time out of Mind always hitherto have been accustomed to have such Fold with the aforesaid E. and M. and their Ancestors; the aforesaid E. with Force and Arms broke the Clays and Pales of the said Priorefs in the Fold of them the said Priorefs, E. and M. at the said Town of F. lately erected and placed, and hindered her the said Priorefs, so that she could not put her Clays and Pales in the Fold aforesaid, as belongeth to her, or partake any Profit of the said Fold; and other, &c.

A Man shall have an Action of Trespass for taking of his Apprentice, or **I** 21 H. 6. 31. for taking of his Servant.

(b) And the Churchwardens shall have an Action of Trespass for taking the **K** Goods of the Church, either in their own Time, or in the Time of their Predecessors.

(c) And a Man may have an Action of Trespass for breaking of his House **L** or Close, and alledge a Continuance of the Trespass, and of the Breaking thereof,

(a) Note; Trespass for beating his Servant, *per quod Servitium amisit*, lies although he was not retained, but served only at Will. 11 H. 4. 2. *per Hull* accordant. And so if A. retains B. to be his Servant, who departs into another County, and serves C. A. before any Request or Seizure, cannot beat B. and if he does, C. shall have Trespass against him, 21 H. 6. 9. and recover Damages, having Regard to the Loss of the Service, 22 *Aff.* 76. and the Retainer is traversable. 11 H. 6. 30.

(b) Note; They are the Goods of the Parishioners, and therefore in a *Fi' fac'* against a Parson *de bonis Ecclesiasticis*, if the Sheriff delivers the Goods of the Church in Execution, Trespass lies by the Churchwardens. 8 H. 5. 4. But an Action cannot inure to them in Succession.

Dyer 48. An Indictment for breaking the Church, and taking the Goods of the Parishioners. *Dyer* 99.

(c) In Trespass with a *Continuando* from such a Day to the Day of suing the Writ, the Defendant says, that A. was seised and infeoffed him, and that so he was seised, till the Plaintiff by Colour entered, upon whom he the Defendant entered; the Plaintiff makes Title that C. was seised and infeoffed him, and that he was so seised, till he was disseised by the Defendant, *abque hoc*, that A. infeoffed him; and it was found for the Plaintiff, and it was moved in Arrest of Judgment, that the Plaintiff had abated his own Writ; for seeing he had shewn that the Defendant disseised him, and had not shewn any
Re-entry

thereof, from such a Day unto such a Day; as well as he may have for treading of his Grass or cutting of his Corn, &c. (a).

M The Ordinary shall have an Action of Trespass for those Goods which he hath to administer as Ordinary; where a Man dieth intestate, and the Goods are taken out of his Possession, he shall have an Action of Trespass for the taking thereof. But he shall not have an Action of Trespass for Goods taken out of the Possession of him that died intestate, but the Administrators shall have such Action; for the Ordinary shall not have an Action for Goods or Debts of him that died intestate, but only an Action of Trespass for the Goods taken out of his own Possession. And the Process in this Writ of Trespass is an Attachment and *Distringas*; and if the Sheriff do at the Attachment or *Distringas* return *Nihil*, then he shall have a *Capias*, and *Alias*, and *Pluries*, and Exigent, and so Process of Utlagary against him. [92.]

A If the King granteth a Protection unto a Man, by which Protection he taketh him, his Lands and Goods, into his Protection, as the common Course and Form of Protections are; now if another Man do afterwards take his Goods, or doth enter into any of his Lands or Tenements during the Time that the Protection is in Force, he shall have a special Action of Trespass against him in this Form:

To shew wherefore, seeing that we lately took into our Protection and Defence W. his Men, Lands, Goods, Rents, and all his Possessions, forbidding all and singular Persons, that none should bring thereupon Injury, Trouble, Damage or Grievance; the said B. with Force and Arms took and carried away the Goods and Chattels of the aforesaid W. while he was under our Protection, found at N. to the Value of one hundred Pounds, and his Men, &c. by which and other Wrongs, &c. to the great Damage of him the said W. and against our Peace: And have there the Names of the Pledges and this Writ. Witnesses, &c.

B And also he who hath the King's Protection, if any Man take his Goods, or enter into his Lands, &c. or beat his Servants, &c. he shall have a special Writ unto the Sheriff for to inquire of them, and to certify the same before the King, &c. and it seemeth the King shall make Process against them by *Venire facias*, as upon an Indictment, and that thereupon they shall be fined; and the Writ is such:

The King to the Sheriff of Lincolnshire, greeting: We command you, that by the Oath of honest and lawful Men of your County, by whom, &c. you diligently inquire what Malefactors and Disturbers of our Peace with Force and Arms took and carried away the Goods and Chattels of A. to the Value of one hundred Pounds, found at N. (whom we took under our special Defence, his Men, Goods, Rents, and all his Possessions, forbidding all and singular Persons, that none should bring thereupon Injury, Trouble, Damage or Grievance) and made an Assault upon his Men there being, and them beat, &c. and other Wrongs, &c. to the great Damage of him the said A. and against our Protection aforesaid, and against our Peace: And without Delay send to us the Inquisition thereof, distinctly and openly made, under your Seal and the Seals of those by whom the same was made, and this Writ, &c.

Re-entry after such Disseisin, he shall not have Trespass with a *Continuando*, but only for the Entry, and so was the better Opinion. 19 H. 6. 28.

(a) See Trespass of Corn (Blees) taken with a *Continuando*. 21 H. 6. 43.

Writ de Trespafs sur le Cafe.

But note, That there is a Statute made *Anno 28 Ed. 3. cap. 6.* that willeth, that no Commission or Writ shall be from thenceforth granted unto the Sheriff to inquire, &c. But if such Writ or Commission be granted, &c. *quere* if it be good; it seemeth not, for this Statute is made only to bind the King, that he shall not grant, &c.

There is another Writ, *Of Hay cut down in the Meadow, and fed; and another Writ, Of a Doer sbut, and Windows broken, &c.*

Writ de Trespafs sur le Cafe.

THERE is another Form (a) of Writ of Trespafs upon the Cafe, which E is to be sued in the Common Pleas or King's Bench; and in that Writ he shall not say *vi & armis, &c.* but in the End of the Writ he shall say *contra Pacem*; and the Form is such:

The King to the Sheriff, &c. If Maud of D. &c. then put, &c. that he be, &c. to answer as well us as Maud, wherefore, seeing that the same Maud lately in our Court obtained our certain Writ of Prohibition against the aforesaid I. that he should not prosecute any Plea in the Court Christian touching Chattels and Debts, which do not concern Testament or Matrimony, and the same Maud delivered our said Writ to the aforesaid I. at C. he the said I. having received our said Writ there, cast it into the Dirt and trod it under his Feet, and also hath prosecuted the Plea aforesaid in the same Court Christian, in Contempt of us and to the great Damage of the said Maud, and against our Peace: And have, &c. (b).

Note well this Writ, that it lieth for casting a Writ into the Dirt. Crompton 133. acc.

Another Writ; *Wherefore in the Water of Plim, along which, between F Humber and Gaunt, there is a common Passage for Ships and Boats, he fixed Piles across the Water, whereby a certain Ship, with thirty Quarters of Malt of him the said W. was sunk under Water, and twenty Quarters of the Malt of the Price of one hundred Shillings perished; and other Wrongs, &c.*

And if the Lessor do oust the Executors of the Lessee of their Term, they G shall have a special Action of the Cafe against the Lessor, and the Writ shall be by Summons, &c. and not by *Pone per Vadies & salvos Pleg'*, as the other Writ of Trespafs is; and the Form is such:

If Joan, Executrix of the Testament of E. of C. shall make you secure, &c. then summon, &c. P. and M. to shew wherefore, seeing that they the said P. and M. demised to the aforesaid E. of C. one Mill and six Acres of Land, with the Appurtenances in N. for a Term which is not yet past, the aforesaid E. of C. in his Testament devised the aforesaid Mill and Land until the End of the said Term to the aforesaid Executrix, to execute the Testament aforesaid thereupon; the aforesaid P. and N. after the Death of him the said E. of C. entered into the said Mill and Land (during the Term aforesaid) and unjustly withhold the same from the

(a) See 7 Ed. 3. 2. 46 Ed. 3. 19. 31 Ed. 3.

(b) Action on the Cafe against one who had bought certain Trusses of Hay, and letting them lie and rot, &c. without carrying them away. 13 H. 4. *Action sur le Cafe* 48. So against

one of whom another bought Goods which he had before stolen. 42 Aff. 8. So for not keeping of Goods, &c. But if it was without the Defendant's Default, he shall be quit. 42 Aff. 9.

ſaid Executrix, in Delay of the Execution of the Teſtament aforeſaid, as it is ſaid: And have, &c.

And if the Sheriff doth arreſt a Man upon a *Capias* directed unto him ſued forth upon a Statute-merchant, and afterwards ſet him at Liberty, he who ſued the Writ ſhall have a ſpecial Action upon the Cafe againſt the Sheriff, which is ſuch :

[93. 9]

A *The King to the Coroners, greeting: If A. ſhall make you ſecure, &c. then put, &c. our Sheriff of Suffolk, that he be, &c. to ſhew wherefore he permitted R. a Merchant, lately taken and being in Cuſtody of the ſame Sheriff at O. by our Writ directed to the ſaid Sheriff by virtue of a certain Recognizance of one hundred Marks made to the ſaid A. by the aforeſaid R. according to the Form of the Statute lately ſet forth at Acton Burnel, to go at large againſt the Will of him: the ſaid A. the ſaid A. not being ſatisfied of the ſaid one hundred Marks, to the great Damage of him the ſaid A. and in Delay of the Execution of the Recognizance aforeſaid, as it is ſaid: And have ye there this Writ, &c.*

B And if the Sheriff in a Writ of Account or Debt return upon any, *That he is not found, nor hath Lands, &c. by which (a) he could be diſtrained, &c.* for which a *Capias* is awarded againſt him, and he arreſted thereupon, where he hath ſufficient Lands, or Goods and Chattels; then he ſhall have an Action upon the Cafe againſt the Sheriff, directed unto the Coroners, as before is ſaid, &c.

C And ſo another Writ; If the Sheriff hath (b) a Priſoner committed unto him for Debt, &c. and afterwards he ſuffer him to go at Liberty before the Debt be ſatisfied, &c. he ſhall have an Action upon the Cafe againſt the Sheriff; and yet it ſeems he may have an Action of Debt againſt the Sheriff.

14 H. 7. 10.
22 Ed. 4. 1 & 2.
34 H. 6. 6.
21 H. 7. 30.
36 H. 6. 3.

D If a Man be indicted of Felony before any Juſtice, and one *T.* as one of the four Men of the Town, and *Reeve*, give the Evidence as Indictors, &c. and afterwards he who is indicted is acquitted, &c. and afterwards the Bailiff of the Hundred or other Officer ſhewed unto *T.* that he who is acquitted hath a Writ of Conſpiracy againſt him, and that he hath a *Capias* to arreſt him, by which he is arreſted and imprifoned until he pay ſix Marks for a Fine for his Deliverance, &c. he ſhall have an Action of Trespafs upon his Cafe: But it ſeemeth he may have a general Action of Trespafs in that Cafe upon falſe Imprifonment, if he have not any Writ directed unto him.

E If a Replevin be removed out of the Liberty by *Pone* into the Common Pleas, and afterwards (pendent the Plea there) the Bailiff of the Liberty doth award a Return in the Liberty to the Defendant, for which he taketh the Cattle and impoundeth them, by means whereof ſome of them die for want of Food; the Party grieved ſhall have an Action upon the Cafe againſt the Bailiff of the Liberty who awarded that Return to hold Plea after the Matter removed in the Common Pleas.

F If a Man do attach another or his Goods for Debt, &c. in a Liberty, and after the Bailiff, by Covin betwixt him and the Defendant to diſcontinue the Plaint, deliver the Goods attached to the Defendant, the Plaintiff ſhall have an Action upon the Cafe againſt the Bailiff, and the Writ is ſuch :

(a) See *Rot. Clauſ.* 26 Ed. 1. m. 8. *dorſo.*

(b) *Quære*, If he is not excuſed of an Escape,

when by the King's Command. Stat. 1 R. 2.

cap. 12. *Dyer* 161.

Writ de Trespas sur le Cafe:

If A. shall make you secure, &c. then summon I. Bailiff of the Great Court or Market of N. that he be, &c. to shew wherefore, seeing that he the said Bailiff upon the Complaint of the aforesaid A. attached B: by his certain Chattels to answer the aforesaid A. in the Court aforesaid, according to the Law of Merchants, as the Custom is in our Kingdom of England, of a Debt of ten Pounds, which the said A. requireth of the aforesaid B. and in the Plaint aforesaid in the same Court, between the Parties aforesaid, it was so far proceeded, that they put themselves upon the Inquisition thereof; the aforesaid Bailiff, pending the Inquisition aforesaid before him, by Collusion had between himself and the aforesaid B. in the Court aforesaid, maliciously departed, and refused to take the Inquisition aforesaid, by which the Plea aforesaid became discontinued; and he the same Bailiff afterwards delivered the Chattels aforesaid to the said B. the aforesaid A. not being satisfied of his Debt aforesaid, to the Damage of him the said A. of twenty Pounds, as it is said, &c.

(a) And a Man shall have an Action of Trespas upon the Cafe against his G Neighbour who hath Lands betwixt him and the Sea, and ought to make Banks, and cleanse certain Ditches and Sewers betwixt him and the Sea, and he doth not cleanse them as he ought to do, by reason whereof his Land is furrounded, &c. he shall have his Action upon the Cafe against him for not mending the Banks, and cleansing the Ditches and Sewers, &c.

If a Man be committed unto the Gaol for Debt or Arrearages of Account, H and the Gaoler of Malice lay so many Irons upon him, or set him in the Stocks, or keepeth his Victuals from him, by reason whereof he is so spent, that he becomes lame, or hath other Infirmity; he shall have an Action upon the Cafe against the Gaoler.

Vide Br. Attachment 23. But if he hath no other Goods, then he may attach these Goods. If a Man doth distrain any Prior's or other Prelate's Horfe, whereupon he is riding in his Journey, for or upon any Contract, Debt or Trespas done by him or his Predecessor, when he might have distrained or attached him by other Goods or Chattels of the said Prior or Prelate, then he shall have an Action upon the Cafe, which is such:

If A. Prior, &c. put B. &c. to shew wherefore, seeing that it is not lawful I for any Person to distrain a Prelate, Nobleman, or any Ecclesiastical Person of our Realm, passing any where through the same Realm by his proper Equipage, by reason of any Contract or Debt, when he hath there other Beasts and Chattels, whereby reasonable Distress may be made upon him; the aforesaid B. distrained the said Prior passing through the Town of C. by reason of a certain Contract between S. formerly Prior of, &c. Predecessor to the aforesaid Prior, and the aforesaid B. a great while since made, as it is said, by a certain Horfe his Palfrey, although he could have then made reasonable Distress upon him by other Beasts and Chattels there, and maliciously detained that Palfrey for a long Time, by which

[94.]

(a) See 29 Ed. 3. 32. And the Action lies in the County, where he ought to repair. 7 H. 4. 8. 14 Ed. 1. 3. 15 Ed. 4. 18. or in the Country where the Land is furrounded. 11 R. 2. Action sur le Cafe 36. And one shall have a View on this Writ, and the Writ shall suppose a Tort done to him; otherwise *per Skin.* in a Writ *de muro reparando.* 7 H. 4. 8. And yet by *Tbirning*, if the Plaintiff recover in this Writ, he shall not distrain *pro non reparando.* *Quare & vide* 7 H. 31. If the Defendant has nothing in the Land, by Reason whereof he ought to repair, except in Right of his Wife, the Writ shall abate against the Husband only.

his weighty Businesſes, for which he made his Paſſage, were undone; and other Wrongs, &c.

A And if a Man promiſe and take upon him to make for another Man certain ^{3 H. 6. 36. b.} Carts for Carriages, or other Thing, and taketh Money beforehand for to do ^{&c.} the ſame, and afterwards he doth not make them according to the Promiſe and Undertaking; the other may have an Action upon the Cafe againſt him, and the Writ ſhall be ſuch :

If W. &c. then put I. &c. to ſhew wherefore, whereas he the ſaid I. undertook to make and build three Carts for carrying of the Viſtuals and Harnes of him the ſaid W. to Parts beyond Sea, for (a) a certain Sum of Money, one Part whereof he hath beforehand received, within a certain Term between them agreed; he the ſame I. hath not taken care to make and build the Carts aforeſaid within the Term aforeſaid, by which he the ſaid W. hath wholly loſt divers his Goods and Chattels, to the Value of one hundred Marks, which ought to have been carried in the Carts aforeſaid, for want of the Care aforeſaid, to the great Damage of him the ſaid W. as it is ſaid: And have, &c.

B And if a Man be lodged in any Inn, and any of his Goods be taken or ^{42 Ed. 3. 11.} ſtolen from thence by a Stranger, he ſhall have an Action upon the Cafe againſt ^{4 Ed. 6. 9.} the Innkeeper, and the Writ ſhall be ſuch: ^{22 H. 6. 21.}

The King to the Sheriff, &c. If A. ſhall make you ſecure, &c. then put, &c. ^{39.}

B. that he be, &c. to ſhew, &c. wherefore, whereas according to the Law and Custom of our Realm of England Innkeepers, who keep common (b) Inns to entertain Men paſſing by the Places where ſuch Inns are, and the Guests lodging in the ſame, and their Goods being in thoſe Inns without Subſtration to keep Night and Day are bound, ſo that for Default of them the Innkeepers or their Servants Damage may not come in any Manner to ſuch Guests: Certain Malefactors took and led away a certain Horſe of the Price of forty Shillings of him the ſaid A. entertained within the Inn of the aforeſaid B. at S. found, for Default of him the ſaid B. and other Wrongs, &c. to the great Damage, &c. And have, &c. Witneſs, &c.

C If a Man do ſell unto another Man a Horſe, and warrant him to be found ^{9 H. 6.} and good, &c. if the Horſe be lame or diſeaſed, that he cannot work, he ^{Action ſur le} ſhall have an Action upon the Cafe againſt him. ^{Cafe 15.}

And ſo if a Man bargain and ſell unto another certain (c) Pipes of Wine, ^{See 9 H. 6. 52.} and warrants them to be good, &c. and they are corrupted, he ſhall have ^{11 H. 6. 18.} Action upon the Cafe againſt him.

But

(a) See this Writ abated, for that it lies only on a Fact, and there was no Conſideration mentioned in the Writ. ^{2 H. 4. 3.} accords, becauſe ſuch Action on the Cafe lies only for a Miſfeasance, but not for a Nonfeasance, becauſe the Default is to be ſpecified, in ^{11 H. 4. 33.} It is debated, whether the Action lies, and whether he ought to declare in certain, what he ought to have on the Agreement for his Labour. ^{3 H. 6. 36. 14 H. 6. 18. 19 H. 6. 49.}

(b) See ^{2 H. 4. 7.} He ought to ſhew in his Count, that the Defendant is a common Hoſt or Innkeeper, otherwiſe all will abate. ^{1 H. 4. 45.}

It is there ſaid, &c. that though the Hoſt or Innkeeper delivers the Keys to the Gueſt, it does not diſcharge him. See *Dyer* 158. the Hoſt excuſed for that he reſuſed to receive the Plaintiff on a reaſonable Cauſe. See for Remedies againſt Hoſts, who reſuſe to harbour Gueſts, ^{18 H. 7. Kelw. 50. Dyer 158. 5 E. 4. 2. 42 Aff. 17. 11 H. 4. 45. 22 H. 6. 21. and 39. &c.}

(c) Yea, though they were ſold by a Servant, ^{9 H. 6.} and there it ſeems that Action on the Cafe lies without any Warranty; ſo is ^{7 H. 4. 14.} and ſee ^{11 H. 4. 6.} where one ſells Clothes, and warrants them all to be of ſuch a Colour, if they are

9 H. 6. 13.
contra.
Post. 93. K.
Dyer 75.

But note; It behoveth that he warrant it to be good, and the Horse to be found, otherwise the Action will not lie. For if he sell the Wine or Horse without such Warranty, it is at the other's Peril, and his Eyes and his Taste ought to be his Judges in that Case. 26 H. 6. 35.

But if a Smith prick my Horse with a Nail, &c. I shall have my Action D upon the Cafe against him, without any (a) Warranty by the Smith to do it well; and the Writ shall be, *Wherefore he fixed a certain Nail in one Foot of a certain Horse of J. at N. by which it became corrupted, so that the same Horse for a long Time could not labour, and he the said J. during that Time lost the Profit of his Horse aforesaid, to the Damage, &c.* For it is the Duty of every Artificer to exercise his Art rightly and truly as he ought (b).

21 H. 6. 10.
46 Ed. 3. 19.

2 Inst. 4.

And if any Sheriff or Under-Sheriff do distrain any Parsons or Vicars, or other Spiritual Persons, in any Lands whereof they are possessed in the Right of their Churches, they shall have Actions upon the Cafe against the Sheriff in this Form:

The King, &c. If A. Parson of the Church of C. shall make you secure, &c. then put, &c. B. our Sheriff of Somersethire, and C. our Under-Sheriff of the same County, that they be, &c. to shew wherefore, seeing that in the Articles of the Clergy of our Realm, granted by Lord E. lately King of England, our Progenitor, it is amongst other Things contained, that our Ministers, as Sheriffs or others, take not the Beasts of Rectors of Churches for any Distresses in the Royal Way, nor in the Fees wherein those Churches were formerly endowed; the aforesaid Sheriff and Under-Sheriff, the Beasts of the aforesaid A. at L. in the Fee of him the said A. of his Church aforesaid, of which the same Church was formerly endowed, took and led them from thence to S. and impounded, and there for a long Time detained them impounded, against the Law and Custom of our Realm, and contrary to the Form of the Articles aforesaid, and against our Peace: And have, &c.

7 H. 4. 44.

If a Man ought to be quit of Toll for himself and his Tenant and Men, in every Market or Fair, &c. Now if any Officer or Bailiff take a Toll of him, his Tenants or Men, he of whom the Toll is taken, shall have an Action of

are there in View of the Buyer, though they are not all of such a Colour, an Action on the Cafe will not lie. But if they are in another Place, or are warranted to be of such a Length, a Writ on the Cafe lies; if a Servant sells Clothes for his Master, and warrants them, an Action on the Cafe does not lie against the Servant on such Warranty, nor (as some held) against the Master, for he did not warrant them.

Note a Diversity between Selling corrupt Wines to Merchandize, for there an Action on the Cafe does not lie without Warranty; otherwise, if it be for a Tavern or Victualler, if it prejudice any. See 19 H. 6. 49. accordant.

(2) See 14 H. 6. 18. So if he promise, and does not shoe my Horse. 19 H. 6. 44. 48 Ed. 3. 16. Cafe against a Smith who refuses to shoe my Horse. 21 H. 6. 55. 18 H. 7. *Kelw.* 50.

(b) If one retains Counsel, and gives him his Fee to assist him in the Purchase of such a Manor,

if he becomes Counsel for another, or discovers his Counsel, Cafe lies; yet though he warrants his Client that he shall have the Manor, but fails therein, yet if he does his Endeavour, Cafe does not lie; for perhaps he could not have the Manor, *i. e.* it was impossible. 11 H. 6. 24. 55.

Trespafs on the Cafe, for that the Defendant assumed to cure his Horse, *Et quod ille tam negligenter & improvide, &c. medicinal', &c. quod Equus interit*; it was held, (1.) If one who is not a common Farrier kills a Horse by Medicines, without Doubt Cafe will not lie, without a special Promise. And (2.) Held in that Cafe by *Newton and Alough*, that there being no such Promise, Cafe would not lie, though he was a common Farrier, and so the Assumpfit is traversable. 19 H. 6. 49. *Sed vide contr.* 48 Ed. 3. 6. 17 Ed. 4. 4. See 11 R. 2. *Action sur le Cafe*, 37, 39. 21 H. 6. 55.

Trespafs upon the Cafe againft him who took the Toll, or diftrained his Goods for the Toll. And alfo he may have a Writ out of the Chancery directed unto the Bailiffs or fuch Officers, that they fuffer them to be quit of Toll, &c. and he may have an *Alias* and a *Pluries*, and Attachment thereupon againft the Bailiffs or Officers, if they do not obey fuch Writs, and the *Pluries* fhall be returned into the Common Pleas or King's Bench.

G. (a) If a Man hath a Manor within any Honour, and by Prefcription hath had View of Frankpledge of his Tenants within his Manor, &c. Now if he or his Tenants be diftrained by the Lord of the Honour, to come unto the Leet of the Honour, and to prefent there thofe Things which ought to be prefented within the View of Frankpledge within the Manor, he who is diftrained may have a general Action of Trespafs for this Diftreff, or he may have a fpecial Writ directed unto the Bailiffs or Officers of the Honour reciting the whole Matter, commanding them that they fuffer the Lord of the Manor to have and to hold his Leet of the Demefne, &c. as he hath ufed to do; and that they do not diftrain him or his Tenants in any wife to come unto the Leet of the Honour, to prefent any Thing which ought for to be prefented in the Leet of the Manor; and alfo comprehending in the fame Writ, that if they have taken any Diftreff for that Cafe, that he then redeliver them, &c. And upon that he may have an *Alias* and *Pluries*, and Attachment againft them, if they do not obey the aforefaid Writs.

[95.]

A. And alfo if a Man hath ufed to have a Gulph of Water in any Water, and it hath been ufed that no other fhould make a Gulph in the fame Water, between his Gulph and the Gulph of B. now if another doth make another Gulph betwixt them, he fhall have his Action upon the Cafe in this Manner (b). *If A. Parfon of the Church of C. fhall make you fecure, &c. put, &c. R. of T. &c. wherefore, whereas he the faid A. ought to have, and he and his Predeceffors, Parfons of the Church aforefaid, from Time beyond Memory always hitherto have been accuftomed to have a certain Gulph in the Water of W. in B. fo that in the fame Water, between the Gulph of him the faid A. and the Gulph of S. of E.*

(a) The Abbot of *Farnham* brought a Writ againft the Sheriff of *Lancafter*, and counted that the King had granted to the Abbot's Predeceffors and Succelfors, the Sheriff's Turn within the Lands of *Farnham*, fo that neither the Sheriff or other Minifter fhould intermeddle therein; and the Sheriff of *Lancafter* came to *Farnham*, and held his Turn within the faid Lands, and caufed the Men of the Farnhife to prefent Matters Prefentable, who prefented Bloodfhed by *J. S.* whereupon the faid Sheriff diftrained *J. S.* to come to his Turn of *Lancafter*, and then fet on him a Fine of 10 s. And when he (the Abbot) delivered to the faid Sheriff the King's Writ to furceafe, and he did not, he then delivered him an *Alias*, *Pluries*, &c. And his Writ mentioned all this Matter, and that fo the Defendant had entered into the Franchife to his Wrong, and in Contempt of the King, and his Commands, and to his Damage, &c. and it was refolved, 1. That

this Writ *tam quam*, &c. is good, and the King fhall be answered therein. 2. That where the Writ was *quo minus idem Abbas Turnum fuum tenere poffit*, it is well alledged, (tho' not faid oufted thereof,) that he was difturbed in holding it; and fo the Action lies, and a *Respondias* awarded. *M. 14 Ed. 3. 17 Ed. 3. 56.* See Action on the Cafe for Difurbance of his Ferry. *22 Aff. 17.*

Trespafs by the Abbot of *Wefm.* for difturbing his Bailiff to hold his View which he had by the King's Grant, &c. and it was agreed, that he need not fhew the Charter in this Action, but in a *Quo Warranto*: wherefore the Defendant pleaded, that he and his Predeceffors had a View there, *ab quo hoc*, that the Abbot had a View. *Tin. 16 E. 3.*

(b) But not for erecting a new Mill or School-houfe, which draws away all the Culom; *contra*, of a Ferry or Fair. *22 H. 6. 14.*

Writ de Trespafs sur le Cafe.

Lord of the Manor of H. none ought or have been accustomed in any Times past to levy any Gulph, fix Pales or Clays, or place any Nets for taking Fish therein; be the said R. (a) hath fixed Clays and Pales between the Gulphs of the aforesaid A. and S. in the same Water, and hath placed Nets for taking Fish therein, and there fished, and carried away the Fish thereof, by which be the said A. lost the Profit of the aforesaid Gulph to the Value of one hundred Shillings; and other Wrongs, &c. And have, &c.

And if a Man hath a Liberty to return Writs, and to execute them, if the Sheriff *ex officio* enter into the Liberty, and execute any Procefs there, the Lord of the Liberty shall have an Action upon the Cafe against him; and these Writs do appear in the Register. B

If a Man be found in Arrearages before Auditors, for which the Auditors do commit him to the Gaol, and afterwards he escape from thence, now the Gaoler ought to pay the Money which was arrear upon the Account. And the Gaoler shall have his Action upon the Cafe against him who escaped to answer unto the King for the Escape; and to the Gaoler for the Damages which he hath sustained; the Form of the Writ is such: C

The King to the Sheriff, &c. We have received Information from the grievous Complaint of A. that whereas B. lately rendered his Account for the Time wherein he was Bailiff of C. in N. to the same C. within the Liberty of K. and be the said B. was afterwards arrested for the Arrearages of that Account by the Auditors of the same Account, and was delivered to the aforesaid A. Keeper of our Gaol of our Liberty aforesaid, to be kept in the same Gaol until he should have fully satisfied the aforesaid C. of the Arrearages aforesaid, according to the Form of the Statute provided touching such Receivers and Bailiffs, the aforesaid B. against our Peace, escaped out of the Custody of the aforesaid A. the aforesaid C. not being satisfied of the Arrearages aforesaid, by reason of which Escape be the said A. hath fully satisfied the aforesaid C. of those Arrearages according to the Form of the Statute aforesaid, to the great Damage and Grievance of him the said A. and because we will not leave that Trespass unpunished, if it was so committed, we command you, that if the aforesaid A. shall make you secure, then that you attach the aforesaid B. by his Body, so that you may have him before us, &c. to answer to us for the Escape aforesaid, and to the aforesaid A. for the Damages which he hath sustained by reason of that Escape: And have there this Writ, &c.

And if a Man play with another at Dice, and he hath false Dice with which he playeth, and get's the other's Money with these false Dice, he who loseth his Money, may have his Action upon the Cafe for this Deceit, and the Form of the Writ is such: D

The King to the Sheriff, &c. If A. shall make you secure, then put, &c. T. of D. &c. that he be, &c. to shew wherefore, whereas the aforesaid T. of D. contriving deceitfully to defraud him the said A. and to extort divers Sums of Money from the same A. excited and procured the said A. to play at Dice with him the said T. at a certain Game called the Dozen for divers Sums of Money, at Burton upon Trent, and the said A. there played with him at Dice at the Game aforesaid, the aforesaid T. certain Dice truly titled delivered to him the said A. to throw, and when the said Dice happened to come to the Hands of him the said T.

(a) And if the Writ be *vi & armis*, it shall abate. 31 Ed. 3. *Action sur le Cafe* 38.

be the same T. falsely and fraudulently threw certain other false Dice, and deceitfully titted, which he knew would turn up Number twelve at every Throw, by which he the said A. lost great Sums of Money to him the said T. at that Game, and the said T. falsely and deceitfully took and carried away those Sums under Colour of Gain, to the Damage of him the said A. of five Pounds, as it is said: And have you there the Names of the Pledges, and this Writ. Witness, &c. And this Writ was sued Anno 5 Ed. 4. which see in the Register 240.

And although that the Defendant doth not entice the Plaintiff for to play, yet if the Defendant play with false Dice, &c. by which he gets the Plaintiff's Money; it seemeth the Plaintiff may maintain this Action well enough, because the Inticement is not the Cause of the Action, but the Casting of the false Dice, by which he gaineth the Money, &c.

Writ of Disceit.

E THIS Writ (a) lieth properly where one Man doth any Thing in the Name of another, by which the other Person is damnified and deceived; then he who is so damnified shall have this Writ, and the Writ is without the Words *vi & armis*, and the Writ is such:

Vide Long 5 Ed. 4. 40. 18 Ed. 2. Disceit 41. This Writ cannot be of Substante.

sued by Attorney. 19 H. 6. 50. It shall not abate for Form, if it hath Matter

The King to the Sberiff of Lincolnshire, greeting: If A. shall make you secure, &c. then put, &c. P. &c. as well to answer us as the aforesaid A. wherefore he fraudulently and maliciously in our Court of Chancery obtained our certain Writ by a Fine of twenty Shillings, taken for our Use, for the Writ aforesaid, in the Name of the aforesaid A. who was wholly ignorant of this, in Deceit of our Court, to the great Damage of the said A. And have you there the Names of the Pledges and this Writ, &c.

26 Ed. 3. 65. Disceit 58. The King shall have this Writ, if no other will sue it, because it is penal. 19 H. 6. 44. in my Name.

So if a Man levy a Fine, confes an Action or Recog. or Statute, or appear as Vouchee

By which it appeareth, That if a Man do purchase a Writ in my Name, for which Writ I ought to pay a Fine in the Chancery, as the Course there is

Bro. Fine pur Contempt 63.

(a) And Note; Such Writ lies notwithstanding the Record on which it is founded be cancelled or avoided before. See 17 E. 3. 12. §. 1.

If one answers for another as Attorney without any Warrant, the Defendant may move this pending the Plea; but if Judgment be given, he is put to his Writ of Disceit against the Attorney, and he shall recover Damages; and if the Defendant (Plaintiff) was Party to the Disceit, he shall have the Writ against both, and recover. 21 Ed. 3. 45. by Thirning.

A brought a Writ of Disceit against B. for that he had sued an original Writ of Debt, and three Capias's in the Name of C. without his Af-

sent against A. whereby A. was vexed, and put to Coſts; the Defendant, as to the Original, pleads the Consent of C. and as to the Capias's, pleads an Award. It was moved, that the last Plea might go to the Whole; for A. was not damaged by suing of the Original, so no Action lies for that; yet by the better Opinion, seeing that was the Beginning of the Tort, he shall answer it. 7 H. 6. 43.

See Mich. 38, 39 Eliz. inter Gollitrand and Hubbart, Moor's Case 866. in the Star Chamber, agreed that if one levies a Fine in another's Name, a Vacat thereof shall be entered on the Roll. See divers Precedents there cited accordingly.

19 H. 6. 44.
7 H. 6. 33.

for every Writ of Debt of the Sum of forty Pounds or more, to pay for every Writ of forty Pounds 6s. and 8d. and if it be of one hundred Marks 6s. 8d. And so for every hundred Marks 6s. 8d. and so for every Writ of Plea of Land, which is *Præcipe quod reddat*, if it be not a Writ of Right Patent, for every Writ which is of the yearly Value of five Marks 6s. 8d. &c. and so according to that Rate. And then if a Man purchase such a Writ in my Name, and I know not thereof, I shall have this Writ of Disceit.

And if I do present one unto a Church whereof I am the Patron, unto the A Ordinary, and one T. doth disturb me, for which Disturbance another doth purchase a *Quare impedit* in my Name returnable in the Common Pleas against the said T. I not knowing thereof, and afterwards causeth the Writ to abate, or me to be Nonsuit in that Writ, I shall have this Writ of Disceit against him who purchased that Writ, &c.

19 H. 6. 44.
If a Man
make an Obligation in my
Name, I shall
not have Disceit, because
I may plead
Non est
factum.

If one forge a Statute-merchant in my Name, and sueth a *Capias* there- B upon, for which I am arrested, I shall have this Writ of Disceit against him that forged it, and against him who sued forth the Writ of *Capias*, &c.

If a Prior or Abbot have Title to present unto a Vicarage whereof they are C Parsons imparsoned, and Clerks secular or regular at their Wills; and afterwards another doth forge a Grant in the Name of the Abbot or Prior under their Covent Seal, that they do grant to one of the Parishioners, &c. that they shall present a secular Person, and not a Regular, as a Canon or such, &c. the Prior or Abbot may have a Writ of Disceit, and the Form shall be such:

If the Prior of Bartholomew of the Suburbs of London, &c. put, &c. W. and B. &c. that they be before us in eight Days of Saint Martin, wheresoever, &c. to shew wheresoever, whereas the same Prior ought and hath hitherto been accustomed, at his Will to present a fit secular or regular Person to the Vicarage of Saint Sepulchre without the Walls of London, which said Church the same Prior holds to his own Use; the aforesaid W. and B. by Collusion betwixt them before had, maliciously contriving to injure the aforesaid Prior, have counterfeited the common Seal of the said Priory, and certain Letters Patent by which the Predecessors of the aforesaid Prior ought to have granted, that the same Prior and Convent of the Place aforesaid ought to present a secular Person, and no other, to that Vicarage, have caused to be sealed with the said counterfeited Seal, and have exhibited those Letters sealed with the said Seal in a certain Cause moved at the Instance of him the said W. as a Parishioner of the Church aforesaid, between him the said W. and the aforesaid Prior, before the Official of the Court Christian of Canterbury, upon the Removal of Friar R. of F. Canon of the aforesaid Prior, admitted upon his Presentation to the Vicarage aforesaid by the Bishop of London, and have procured him the said Prior to be wearied divers Ways in this Matter with Labour and Expences by virtue of the Letters aforesaid, to the great Expence and Grievance of him the said Prior: And have you there the Names of the Pledges and this Writ, &c. Post. 98. N. 22 Ed. 3. 11.

And if a Man be Attorney for another in a Plea Real against the Demandant, D and afterwards by Covin between the Attorney and the Demandant, the Attorney makes Default, for which the Land is lost, the Tenant who lost the Land shall have a Writ of Disceit against the Attorney, and the Writ shall be such:

To shew wherefore, whereas the said A. made the aforesaid B. his Attorney before us, in a Plea which was before our same Justices by our Writ, between K. Demandant, and the aforesaid A. Tenant, of twenty Acres of Land with the Appurtenances in C. to gain or lose in the Plea aforesaid, the aforesaid B. by Collusion had between him and the aforesaid K. absented himself gratis at a certain Day prefixed by the aforesaid Justices in the same Plea in the Bench aforesaid, by which the said A. for the Default of him the said B. lost his Land by the Consideration of our Court, in Deceit of our same Court, and to the great Damage and manifest Danger of the Disberison of him the said A. And have, &c.

E And if an Action of Trespafs be brought against many, and the Plaintiff and one J. by Covin between them cause certain Persons to come into Court and say, that they are the same Defendants, and that they make the said J. their Attorney, and afterwards the said J. as Attorney for the Defendants, pleadeth unto Issue, and afterwards suffers the Inquest to pass by Default, by which the Plaintiff doth recover against the Defendants: Now those who are the true Defendants shall have a Writ of Disceit against J. who appeared as Attorney for them, &c. and the Writ appeareth in the Register.

And so if R. doth recover in an Assise against W. certain Tenements and Damages, and because W. hath nothing in the same County to levy the Damages, R. removeth the Record of Assise into the King's Bench or Common Pleas, to sue forth Process thereupon, and to have Execution of the said Damages recovered, for which the said W. to defraud the said R. of his Execution, sueth for a Writ to remove the Record in Chancery, furnishing that he will have an Attaint thereupon before the Justices of Assise, &c. by which the Record is removed into the Chancery, and delivered to the said W. to carry to the said Justices of Assise, whereupon he may sue his Attaint. Now if the said W. will not sue forth the Attaint, but delay him, to oust him of his Execution, R. who recovered shall have a Writ of Disceit against him upon the Matter, which appeareth in the Register.

[97.]

A One I. de A. sueth a *Præcipe quod reddat* against C. and T. his Wife, who plead a Fine levied to the said T. by one F. and Margaret his Wife, Mother of the Demandant, &c. and the Defendant saith, that his Mother's Name is Margery and not Margaret, and after Day is given by the Court, at which Day C. and his Wife procure and cause a Stranger to come into Court, and confess the Fine as the Tenant hath pleaded, by which the Demandant is barred, the Demandant shall have a Writ of Disceit against the said C. and T. his Wife, as appeareth by the Register. But it seemeth, that if Margery do levy a Fine of her Land by the Name of Margaret, that she (a) and her

5 Fd. 4. 40.
B. Confess. &
Avoid. 40.
Where a Man
levieth a Fine
of my Land in
my Name, I
may confess
and avoid the

same, as to say that another of the same Name levied the same; without that, that I levied the same; for I shall not have Disceit; by Littleton and Danby.

F f 2

Heirs

(a) See accordant 13 Ed. 3. *Esloppel* 231. 1 *Aff.* 11. 3 *Aff.* 4. where one granted a Reversion on an Estate for Life, which he leased by the Name of Gilbert *filius Stephani*. In a *Quid juris*

clamat against the Son of the Lessor, he pleads, that his Father's Name was *Richard Fitz-Stephen*, &c. whereby there ought to have been an Attornment to the Grantee, *cumque hoc*, that G. and G.

Heirs shall be concluded to say, that she hath another Name. But the Tenant may plead, that she by the Name of *Margaret* did levy a Fine of her Land, &c. and that hath been done where a Woman had to her Name *Agnes*, and she levieth a Fine by the Name of *Anne*, it hath been awarded good, and shall bind her and her Heirs, and shall be pleaded, that she by the Name of *Anne* levied the Fine.

20 H. 6. 10. and the Writ was brought where he was at the Time of this Protection.

44 H. 3. 4. If a Man sueth

If a Man sue a *Præcipe quod reddat* against divers Tenants, and they purchase a Protection for one of them, furnishing that he is beyond the Seas upon the King's Service, whereas he is and always hath been remaining in *England*, by which the Demandant is delayed: The Demandant shall have a Writ of Disceit against the Tenants for that Delay; and the Writ shall be such:

a Protection, and doth not go, this Writ lieth; contrary, if he go, though he presently return.

If A. shall make you secure, &c. then put B. and C. &c. that they be before, &c. as well to answer us as A. wherefore, whereas he the said A. in our Court before our Justices of the Bench impleaded (a) by our Writ the aforesaid B. and C. of three Parts of the Manor of S. with the Appurtenances, they the said B. and C. manifestly contriving to evade our Court and the Law and Custom of our Realm of England, and to delay the Prosecution of the aforesaid A. in this Behalf at a certain Day prefixed to the said Parties in the same Plea before the said Justices, caused to be produced before the said Justices our certain Letters of Protection, comprizing that he the said C. was then gone into Parts beyond the Seas in our Service, and so he was to be quiet touching all Pleas and Complaints, except Pleas of Dower unde nihil habet, and Quare impedit, and Assise of Novel Disseisin, and Darrein Presentment, and Attaints, and except Pleas in which he might happen to be summoned before our Justices in Eyre in their Circuits, he the said C. (b) being then, afterward and before that Time, continually residing in England, by which that Plea before the said Justices remained without Day, in manifest Contempt of us, and in Deceit and manifest Evasion of our Court aforesaid and of the Laws and Custom aforesaid, and also to the great Expence and manifest Danger of the Disberison of him the said A. And have there, &c.

G. named in the Note, &c. are one and the same Person, and thereon the Tenant went without Day, *i. e.* the Plaintiff was Nonsuit; yet it was agreed, that the Reversion passed. 11 Ed. 3. *Quid Juris* 2. 9 Ed. 4. 42.

(a) See such Writ of Disceit brought for purchasing a Protection, *quia moratur*, and laid in the County where the Protection was, and it may be in the County where the *Moratur*, or Abiding was, *per Cur'*, 20 H. 6. 10. the Abbot of *Salby's* Case, without shewing either in the Writ or the Count, the Date of the Protection. 20 H. 6. 13.

(b) But it is a good Plea to say, that the Ma- lady took or seized him going, &c. so that he could not go, &c. 18 Ed. 3. 12. See such Writ brought against one who purchased a Protection, *quia moraturus*, whereas he was not at the Time of the Protection cast, remaining *in obsequio nostro, sed apud B. &c. propriis Negotiis intendendo*, the Defendant shews his Detainer and Safeguard to *Calais*, and that he returned by the Lieutenant's Command to buy Victuals, &c. *abique hoc*, that he was intendant *propriis Negotiis*. 20 H. 6. 24.

C In a *Præcipe quod reddat*, if the Sheriff return the Tenant summoned where he was not summoned, by which the Defendant loseth his Land by Default at the *Grand Cape* returned, the Tenant shall have a Writ of Disceit against him who recovered, and against the Sheriff for his false Return, and by that Writ the Tenant shall be restored unto his Land again. And it seemeth the Tenant shall have this Writ after Judgment given for the Demandant against him that recovered before any Entry or Possession: For if the Tenant shall not have a Writ of Disceit before the Demandant doth enter, then perhaps the Demandant will not enter, until the Summoners in the *Præcipe quod reddat*, and the Summoners, Viewers and Pernors in the *Grand Cape* (*a*) are dead, and then he shall not have a Writ of Disceit after their Deaths; for whether he were summoned or not shall be tried by the (*b*) Summoners, and Viewers and Pernors, by examining of them. But see 3 *Ed.* 3 That the Tenant shall not have a Writ of Disceit before the Demandant hath entered; *tamen quere.* And in a Writ of Disceit the Process shall be made against the Summoners, Viewers and Pernors to be examined thereupon, &c. And if the Demandant who recovered by false Return of the Sheriff, make a Feoffment of the Land, then the Writ of Disceit lieth against the Demandant who recovered, and against his Feoffee and the Sheriff, and if the Demandant who recovered be dead, and the Sheriff also, yet the Writ of Disceit lieth against the Demandant's Heir, and against him who is Tenant of the Land, if the Summoners, Viewers or Pernors be living: But if the Summoners, Viewers or Pernors be dead, then the Writ of Disceit is lost. But a Writ of Disceit lieth if any of the Summoners, Viewers or Pernors be alive; for if they say that they did not summon him, then the Plaintiff in the Writ of Disceit shall recover his Land and shall be restored, &c. for it ought to be done by two (*c*) Summoners at the least, and two Viewers, &c. And if any of them do not that which is returned they ought to do, then the Writ is not executed as it ought to be, by which the Plaintiff in the Writ of Disceit ought then to be restored, &c.

Post. 107. H.
104. P.

3 Ed. 3.
Disceit 47.
18 Ed. 2.
Disceit 54.

18 Ed. 4. 11.
38 Ed. 3. cont.

35 H. 6. 46.
1 Ed. 2.
Disceit 48.

(a) But yet he shall have Case against the Sheriff, 1 *H.* 6. 1. and recover Damages. 6 *Ed.* 4. 3. Note; If in this Writ the Sheriff returns the Party warned, where in Truth he was not, and Judgment is given that the Demandant shall have Restitution, he shall have this Writ against the Sheriff, and if the Disceit is found recover Damages, but not defeat the Remedy had. 8 *H.* 6. 2. *per Scars.* for he cannot lose by the Default, but by the Disceit found he may.

(b) Note; The Process is a *Venire facias*, &c. and if the Summoner, &c. appear, but he who recovers, or the Party are not warned, the Summoners shall be examined, and a *Distringas* shall issue; and if the Disceit be found, Judgment may be given instantly against them who made Default, without a *Distringas*, or Writ of *Scire facias*, 8 *H.* 6. 2. 50 *Ed.* 3. 18. or he may have

a *Distringas*, 12 *Ed.* 3. 21. Note; He may have also a Writ of Disceit against the Party to the Recovery, &c. See 8 *H.* 6. 1. 30 *Ed.* 3. 49. So he may have it against the Party who recovers, or his Heir, and a *Scire facias* after the Disceit found, against the Tertenant. 18 *Ed.* 4. 11. 38 *Ed.* 3. 16. See 18 *R.* 2. *Disceit* 49. 8 *Ed.* 3. 6. 8 *H.* 6. 2. 20 *Ed.* 3. 43. 8 *H.* 4. 24. *contr.* 38 *E.* 3. *contr.*

(c) And therefore if one of the Summoners says that the Summons was not made, and the other that it was made, the Demandant shall recover. 8 *H.* 6. 2. 50 *Ed.* 3. 17. So if one makes the Garnishment, and the other was on the Land at the same Time for the same Purpose, but says nothing, the Demandant shall recover. 5 *Ed.* 3. 65. 8 *Ed.* 3. 6. See 2 *Ed.* 3. 21.

And

And in a *Scire facias* to execute a Fine, if the Sheriff return the Tenant D summoned by two Summoners, if it be not true, yet the Tenant by the Return shall lose the Land, for Execution shall be awarded upon the Return, if the Tenant do not appear, and then the Tenant shall have a Writ of Disceit against the Sheriff, and him who had Execution, and him who is Tenant, and shall be restored to the Land (a).

Post. 9S. R.
99. H.

And so if a Man (b) sue a *Scire facias* upon a Recognizance of Debt, and the Sheriff return the Defendant summoned, where he is not summoned, for which the Plaintiff hath Execution awarded, the Defendant shall have a Writ of Disceit against him who had Execution, and the Sheriff shall be punished by this Writ for his Falsity, and the Party who recovered shall make Restitution of that he recovered, &c. (c).

And

(a) *Contra per Juine*. He shall recover only Damages, and for that it shall be tried by the Inquest. 1 H. 6. 5.

(b) See *Rot. Parl.* 21 Ed. 3. nu. 25. A Petition for a Writ of Disceit in the like Case.

Note; A. brought a *Scire facias* against B. upon a Fine, whereby the Tenements were rendered to B. in Tail, Remainder to C. &c. the Tenant pleads that the Queen had a Writ of Disceit pending, to reverse the Fine; for that the Tenements were Parcel of her Manor of D. which is Ancient Demesne, and that she held the Manor for Life by a Lease from the King, and thereupon Day was given to the Parties. And now the Queen's Attorney (and B. the Tenant) appears, who says, That he knows nothing why the Fine should not be reversed. And now A. *ex gratia Curie* was received to answer, wherefore the Tenant did not deny, &c. and he demanded Judgment of the Writ. 1. For that A. and C. to whom the Estate is limited by the Fine are not made directly Parties to the Writ; *sed non allocatur per Cur'*, who said, That this Writ is good, and shall be always brought against the Tertenants. 2. That the Queen had nothing in the Manor, nor had at the Day of the Writ purchased; for she had demised it before. — *Wilby*. This Suit is given to the King, but that is where no other will sue; will you say any Thing else? And then he shewed an Amerciament and Fine, and also an ancient Recovery of the same Tenements, in an Action tried at Common Law. *Jedd*. Seeing by this ancient Fine and Recovery, the Tenements are become Franckfee, and pleadable here; *Quere*, if they should now be received, to reverse the late Fine, without suing to reverse the former Fine and Recovery, which are still in Force: And for that he was a Stranger to the Fine, and also to the Suit, and

did not shew it *sub pede sigilli*, and a Writ to allow it: Therefore by *Wilby* it is no Plea; for on a *Nient comprise* pleaded, it cannot be tried between the Parties. 26 Ed. 3. 66. And so *Note*, That a Fine of elder Date will hinder the Reversal of a Fine of later Date by a Writ of Disceit, but not *e converso*. See 21 Ed. 3. 25, 26. acc.

(c) And also the Issues in the mean Time. *Mich.* 16 Ed. 3. But not Damages. 18 Ed. 3. 28. And *note*; the King shall have the Issues in Disceit, on a Recovery by Default on a *Præcipe*. 29 Ed. 3. 34. See 8 H. 6. 2. 41 Ed. 3. 2. 10 Ed. 3. 18. That he shall recover all in Damages against the Sheriff, see the Fine avoided between the Parties, for that the Court had not Jurisdiction thereof. 9 H. 7. 12. and 8 Ed. 4. 6. *per Littleton*.

And *Note*; In a Writ of Disceit on a Fine levied of such and such Lands, &c. and Error brought in B. R. the Transcript of the Fine was removed thither: and the Court being apprised by the Record, that the Manor (of which the Lands were alledged to be Parcel) was ——— and by the Conuſance on the Defendant's Part, or otherwise by Verdict, that it was Parcel of the Manor; Judgment was given that the Fine be reversed; and yet by Force of this Process, and for that other Lands were rendered by the Fine, the Fine was not taken off the Files, but only marked *quoad* those Lands. 21 Ed. 3. 20. 17 Ed. 3. 31. But *note*, That he who is Tertenant ought to be made Party by the *Scire facias*; for the Conuſance of him who is Party to the Fine, shall not bind the Tertenant, if the Lands are (not) Ancient Demesne. 7 H. 4. 44. 8 H. 4. 29. See also in Disceit by the Queen, on a Fine levied of Lands in Ancient Demesne; and by the Transcript it appears, that the Lands were rendered

- A** And if a Man levy a Fine at Common Law unto another of Land which is in Ancient Demefne, the Lord of Ancient Demefne fhall have a Writ of Disceit againft him who levied the Fine, and he who is Tenant fhall avoid the Fine, and there he who ought to give the Land fhall be reftored unto his Poffeffion and Title which he hath given by the Fine, becaufe the Fine and Gift thereby is avoided. But if he who levieth the Fine, have after by his Deed releafed unto him who hath the Poffeffion by the Fine, or by the Deed confirmed his Eftate in the Land, then he unto whom the Release or Confirmation is made, fhall have and keep the Land notwithstanding that the Fine be avoided, becaufe that Release or Confirmation made unto him being in Poffeffion, hath made his Eftate firm and rightful, againft him and his Heirs who releafed or confirmed the fame.
- B** If a Man do recover in a Writ of Wafte where the Tenant was not fummoned, &c. the Defendant fhall have a Writ of Disceit, and fhall be reftored. *T. 9 Ed. 3. See 17 Ed. 3. 58. 29 Ed. 3. 42. 29 Ed. 3. Disceit 63 and 56.*
- C** If Husband and Wife lofe the Land of the Wife by Default, they may fue a Writ of Disceit, and if the Husband dieth, it feemeth the Wife may fue a Writ of Disceit to be reftored to her Land, &c. or have a *Cui in vita* upon the Statute at her Election; and the Writ of Disceit fhall be directed unto the fame Sheriff who did the Disceit, and falfe Return, and not upon the Coroners, as appeareth *Trin. 20 Ed. 3.* Yet it feemeth it is not Error, if it be directed unto the Coroners, &c. *20 Ed. 3. Disceit 4.*
- D** (a) And in a Writ of Disceit, if the Sheriff return one Summoner dead, yet the other Summoner fhall be examined, &c. And if it be found that he did not fummon, &c. the Party fhall be reftored unto the Land, and fo if one Viewer or Pernor did not do that which he ought to do, the Party fhall be reftored, becaufe it ought to be done by both, &c. But if Summons be by four Men, as long as two of them are alive, the Tenant who loft may have a Writ of Disceit.
- E** And a Writ of Disceit lieth againft him who imbezileth a Writ, and alfo againft him who procureth another to imbezil a Writ, if it be imbeziled, &c. and they may be joined in the fame Writ. See *19 H. 6. 29, 50, 72. 9 H. 6. 5. 8 H. 6. 20, 50.*

[98.]
 35 H. 6. 46.
 8 Ed. 4. 6. cont.
 Where a Man lofeth by Præcipe in Capite, where he ought to have fued in the Lord's Court, and the Lord brought Disceit for the Profits of the Court.
 48 Ed. 3. 20.
 17 Ed. 3. 18.
 20 Ed. 2.
 Disceit 5. ac.
 19 Ed. 3.
 Disceit 3.
 19 Ed. 2.
 Disceit 56.
 20 Ed. 3.
 Disceit 4.
 he fhall not have Disceit, by Wilby.
 Hill. cont.
 20 Ed. 3.
 Disceit 5.
 8 H. 6. 1.
 18 Ed. 4. 1.
 19 H. 6. 29,
 50, 71.

rendered in Tail to *A.* Remainder to *B.* in Tail, &c. and a *Scire facias* fued againft the Tertenants (which feem to have been the Iflue of *B.* in Tail, but was not fo fupposed by the Writ) who acknowledge the Lands (except eight Acres which were Frank-fee); and *Thirning* would not avoid the Fine, till thofe in Remainder were made Parties by *Scire facias*. *21 Ed. 3. 56.* But it is fufficient if the Tertenant only be made Party to the Writ. *16 Ed. 3. 66 Note*; By the Cafe aforefaid, it appears it is in the Plaintiff's Election to bring a Writ of Disceit againft

the Conufor of the Fine and the Tertenant, or otherwife to bring it againft the Conufor alone, and to have a *Scire facias* againft the Tertenants; *quod Nota*; and fo it is in Disceit on a Recovery for Non-fummons, &c. See *38 Ed. 3. 1.* See *1 Lutw. 712. 18 Ed. 4. 6. 36 H. 6. 34. contr. 17 Ed. 3. 31. contr. See 10 Co. 50. a. 2 R. 3. 21. 15 H. 7. 12.*
 (a) So in Wafte, where the Writ iffued to the Sheriff who found the Wafte, by *Disceit*. *30 Ed. 3. Disceit 5.* See *8 H. 6. 2. 8 Ed. 3. 6. 8 H. 6. 5. 35 H. 6. 46.*

20 H. 6. 34. And if a Man doth bargain with another to infeoff him (a) of certain Lands, F
16 Ed. 4. 9. and afterwards he infeoffeth another Man, he with whom he made the Bargain shall have a Writ of Disceit (b).

26 H. 6. (c) And if a Man do recover in a *Quare impedit* by Default, &c. if the De- G
Disceit 15. fendant be not summoned, he shall have this Writ, and the Summoners and
27 H. 6. 5. Pledges upon Attachment shall be examined thereupon: And if the Deceit
vide 34 Ed. 3. be found, he shall have Writ unto the Bishop, &c. for him.
Disceit 57.

Neither the Clerk nor the Def. ousted. If an Action of Debt be brought against two as Executors, where one of H
9 Ed. 4. 33. is Executor shall have a (d) Disceit against him, and recover as much in Damages.
Lit. acc.

10 Ed. 4. 9. If an Attorney be not informed by his Client to plead in any Action, and I
he plead, *That he is not truly informed, and therefore can give no Answer, &c.* the same shall be entered to give him of Damages in a Writ of Disceit brought against him in the Matter, &c.

11 Ed. 4. 6. If a Man warrant Lands, and warrant them to be of a certain (e) Length, if K
5 H. 7. 41. they be not of such Length, he who bought them shall have a Writ of Disceit against him upon his Warranty, although the Warranty be only by Word; but if the Warranty be made at another Time after the Bargain made, then it ought to be in Writing, otherwise he shall not have an Action upon that Warranty; for he shall not have an Action of Disceit therefore, if the Warranty be not made upon the Bargain and at the Time of the Bargain.

9 Ed. 5. 7. The Writ of Disceit ought to be brought into the County where the Disceit L
is supposed to be done.

8 Ed. 4. 6. If a Man recover in a *Præcipe in Capite* by Default, where the Lands are M
not holden of the King, nor he hath not the Lord's Licence to sue in the Common Pleas, the Lord shall have a Writ of Disceit, and (f) recover Damages; but the Recovery shall stand in Force, and the Lord shall have the Seigniorship, and he who recovered shall also hold over the King by way of Estoppel (g).

(a) So if he grant a Rent-charge, or acknowledges a Statute, and after re-enters according to an Agreement; or if he makes a Feoffment to another, and after re-enters and infeoffs another, and the first Feoffee enters. 20 H. 6. 34, 35. Note here, it was a Bargain without a Deed.

(b) See 16 Ed. 4. 9. 3 H. 7. 14. 21 H. 7. 41.

(c) But where the King recovers, the Party must sue by Petition to the King; and if he answers, *Let Right be done*, he shall have a Writ of Disceit; and if he answers, *Let the Disceit be examined*, then on that Indorsement they may proceed, but without Writ. 10 H. 4. 4. See 27 H. 6. 5. 26 H. 8. 34. 34 Ed. 1. Disceit 17.

(d) See 9 Ed. 4. 13. 21 Ed. 4. 24. 48 Ed. 3. 25. 11 H. 4. 84. 20 Ed. 4. 9, 51.

(e) Because it cannot be tried but by parol Proof; so if one warrants Wares to be of such Weight, &c. if found not to be of such Weight, &c. at the Time of the Warranty. 11 Ed. 4. 6. 13 H. 4. 1. and see by *Hankf.* 13 H. 4. 1. and *Choke* 11 Ed. 4. 16. If the Vendor warrants a Horse to be found, where he has a Defect that is apparent to the Senses, Disceit does not lie; *contra* by *Thirning*, if the Horse be not there present.

(f) But he shall not recover Damages as for Loss of a Seigniorship or Court; for the Seigniorship remains, and the Loss of the Court is only *pro hac vice*. 17 Ed. 3. 31, 37.

(g) See a Writ upon this Case, 17 Ed. 3. 59. *Quare* 10 Ed. 4. 6, 37.

- N** If a Man procure another to sue an Action against me to trouble me, I shall have a Writ of Disceit. 1 Salk. 14, 15.
3 Cro. 373.
- O** A Writ of Disceit shall be maintainable against the Attorney and the Sheriff, because they put a Writ of *Habere facias seisinam* upon the File of the Sheriff's Writ, where they have not any Record to warrant it. See 17 *Ed.* 3. 51. 2 Infl. 2, 215.
- P** If a Man levy a Fine of Land in Ancient Demesne, and also of Land at the Common Law, the Party shall have a Writ of Disceit for the Ancient Demesne Land, and shall avoid the Fine for that Land, and the Fine shall stand good for the Land at the Common Law (a). 21 Ed. 3. 20.
5 Ed. 4. 6.
17 Ed. 3. 31.
Disceit 37.
- Q** If a Man lose Land by Default in a *Præcipe quod reddat*, (b) and dieth, his Heir shall have a Writ of Disceit as well as the Father, and shall have Restitution.
- R** If a Man have Execution by Default upon a Recognizance in a *Scire facias* sued out against another, and the Defendant dieth, his Executors shall have a Writ of Disceit, and shall be restored, &c. If the Disceit be found that their Testator was not warned, there the Garnishers shall be examined, &c. 15 Ed. 3.
Disceit 43.
18 H. 2. ib. 50.
Post. 99. H.
- S** And if a Man recover an Annuity, and afterwards sueth a *Scire facias*, and recovereth by Default, the Defendant shall have a Writ of Disceit, if he were not warned. 18 Ed. 3.
Disceit 42.
[99.]
- A** And the Vouchee shall have a Writ of Disceit where he loseth by Default, if he were not summoned, &c. *Post.* 106. 3 & 4 Ed. 3.
Disceit 45.
- B** In a *Præcipe quod reddat* against the Husband and the Wife at the Grand Cape, the Husband appeareth in Person, and the Wife appeareth by Attorney, who hath a Warrant which is insufficient, by which Judgment is given upon the Default of the Wife against the Husband and Wife, &c. yet they shall have a Writ of Disceit, if they were not summoned, &c. 18 Ed. 2.
Disceit 54, 55.
- C** And where a Man loseth by Default in a *Quare impedit*, or Waste, it behoveth that the Summoners and the Pledges upon the Attachment, and the Manueaptors upon the Distress, shall be examined, when the Writ of Disceit is brought therefore. See in the Title of *Disceit* in the Abridgments for that Matter. 29 *Ed.* 3. 42. 19 Ed. 2.
Disceit 56.
- D** If a Man sue a Writ of *Monstravit* against another to account, &c. where he hath sufficient Lands in another County, by which he may be brought to answer by Writ of Account, the Defendant shall have a Writ of Disceit against the Plaintiff who sueth the *Monstravit*, *quod vide Mich.* 9 *Ed.* 2. *Fitz. Disceit* 52.
- E** If Tenant for Life loseth by Default, where he was not summoned, and dieth; he in the Reversion shall not have a Writ of Disceit, because he shall not have a Writ of Error, if not by the Statute, &c. So 8 *Ed.* 3. 6. *per Parning*, clearly. Dyer 241. b.
8 Ed. 3. 6, 52.

(a) See 7 *H.* 4. 44. 17 *Ed.* 3. 31. 21 *Ed.* 3. 20. not pleaded. 17 *Ed.* 3. 59, &c. 8 *Ed.* 3. 6.

(b) And the Parol shall not demur for Nonage of the Demandant, if a Deed of the Ancestor be 18 *R.* 2. *Disceit* 30 & 50. 15 *Ed.* 3. *Disceit* 43.
8 *Ed.* 3. 62, 52. 8 *H.* 6. 2. 15 *Ed.* 3. *Disceit* 45.

1 Ed. 3. 5.
So of Lessee
of Years.

If a Man be Tenant for Life of a Manor in Ancient Demesne, and the Tenant of that Manor doth levy a Fine of his Land at the Common Law, the Lord of the Manor who is Tenant for Term of Life should have a Writ of Disceit, and after his Decease, he in the Reversion shall have a Writ of Disceit, and reverse that Fine. 17 Ed. 3. 58. *vide supra* B.

10 H. 4. 4.

If the King doth recover in a *Præcipe quod reddat*, or in a *Formedon* against another Man by Default, the Tenant shall have a Writ of Disceit, as well as he shall have Writ of Error, where the King recovereth by erroneous Process, &c. or erroneous Judgment. See for this Matter *M. 10 H. 4.* in Title *Reverse* in the Abridgments.

22 Ed. 3.
Duceit.

And this Writ of Disceit shall sometimes issue out of the Common Pleas (a), or he may sue it out of the Chancery, if he will; as if a Man lose Lands by Default in a *Præcipe quod reddat* in the Common Pleas, the Tenant, if he were not summoned, shall have a Writ of Disceit out of the Common Pleas, if he will, or out of the Chancery. *Vide ante* 98. R.

17 Ed. 3. 51.
Disceit 39.

And so if a Man have Execution upon a Recognizance in the Common Pleas or King's Bench by Default, &c. the Defendant shall have a Writ of Disceit, if he were not summoned out of that Court where the Execution was sued, &c. or out of the Chancery, at his Election.

17 Ed. 3. 51.
Disceit 9.

And there are divers other Writs of Disceit, in the Form of a Writ of *Audita Querela*, as if one sue a *Præcipe quod reddat* against another, and the Tenant is effoined at *Quind' Pasch'*, which Effoin is adjourned until 15 *Trin.* the Term (b) following, and the Demandant and his Attorney by Covin betwixt them recovered a Writ in the File of Writs, that the Tenant hath made *N.* and *M.* his Attornies jointly and severally at the said *Quind' Pasch'*, by which the Demandant challengeth that Effoin, because he had Attorney in the Writ not effoined, by which at the Day of Adjournment the Effoin is quashed, and the Demandant recovereth the Land by this Default at *Quind' Pasch'*. Now the Tenant shall have a Writ of Disceit against the Demandant and his Attorney, and the Form of the Writ shall be in the Nature of *Audita Querela*, and shall be directed unto the Justices of the Common Pleas, and is such:

The King to his Justices of the Bench, greeting: I. of B. hath shewed unto us, that whereas W. of B. lately impleaded him the said I. before you in the Bench aforesaid by our Writ, of one Messuage, &c. in B. and hath proceeded to the Taking of the proper Inquest, and Day was given to the Parties from Easter Day in fifteen Days last past, at which Day he the said I. caused himself to be effoined, and that Effoin was adjourned until fifteen Days of the Holy Trinity then next following, and the aforesaid W. and P. his Attorney, by Collusion before had betwixt them, contriving to disinberit the aforesaid I. of the Tenement aforesaid, recorded S. of T. Servant of the said W. of B. and W. of P. Attorneys for him the said I. and caused a Writ of Attorney to be put in the Files of Writs, and a certain Challenge of the aforesaid Effoin, in fifteen Days of Easter, in the Bench aforesaid, he the said I. being wholly ignorant of the Day, and that because the

(a) Note 3 Levin. 419. 22 Ed. 3. 11. contra. Vide *ibid.* 51.

(b) See Disceit against one who cast an Effoin of the King's Service, and the Tenant. 12 H. 4. 24.

aforesaid I. who had his Attorney in the same Plea, did not assert the aforesaid Ejourn to be cast, that at the said fifteen Days of the Holy Trinity Seisin of the Tenement aforesaid stood adjudged to the same W. of B. by the Consideration of the Curt, because the Attorney of the aforesaid I. was not essoined at the said fifteen Days of Easter, in Deceit of our Court aforesaid, and to the great Damage and manifest Disberison of the said I. whereupon the same I. hath besought us by his Petition exhibited before us and our Council in our Parliament, that we will provide him a Remedy in this Behalf, and because the aforesaid W. of B. speaking before you in the Bench aforesaid touching the Premisses in this Behalf, hath acknowledged these Things, as it is said: We command you, that having heard the Complaint of him the said I. upon the Premisses, and having called before you as well the aforesaid W. of B. and W. of P. as S. of F. and having heard severally their Reasons thereupon, if it shall appear to you, by Inquest thereon to be taken, or by the Acknowledgment of them the said W. W. and S. or any of them, that I. hath lost his Tenement aforesaid by the Collusion aforesaid, as it is said, then that you cause to be done, as of Right shall be done, compleat Justice, as well for us as the aforesaid I. as well touching the Deccit and Collusion aforesaid, as touching the Recovery to be had of the Tenement aforesaid. Witness, &c.

K If a Notary or other Person of Covin counterfeit the Seal of any Parson or Vicar, and forge Letters of Resignation of his Parsonage or Vicarage, in the Name of the Parson or Vicar of his Benefice, he shall thereupon have a Writ of Disceit, and the Writ is in the Register. But whether by that he shall be restored unto his Benefice, *quere*; it seemeth not, because the Removing of him is a Spiritual Act.

[100.]

A If two severall Men come before the Mayor of the Staple, or before other Mayor of a Town, and there one acknowledgeth unto another one hundred Pounds in the Name of another Man, affirming him to be such a Person, which in Truth he is not; for which the other Person is troubled, and sued upon the Statute, and taken in Execution, &c. he shall have a Writ of Disceit against the two Persons, &c. and shall recover Damages against them.

B And so if a Man be bounden unto a Prior by a Statute-merchant in forty Pounds, to be paid at a certain Day, at which Day he payeth the Money unto the Prior, &c. and afterwards another Person in the Prior's Name cause the Statute to be certified in the Chancery, and sue Execution thereupon, the Prior not knowing thereof, he who was bounden, and hath paid the Money, shall have a Writ of Disceit against the Prior and those who sued the Execution in his Name.

C If the Escheator, by Virtue of a Writ directed to him (*a*) doth seise into the King's Hands the Lands of any Person who holdeth of the King in Chief, by which the King commits the Wardship of those Lands unto another, who grants them over unto another during the Nonage of the Heir: Now if the

Escheator.

(a) See 9 H 6. 6 an Office found before the Escheator *virtute brevis*: That one *A* died seised of the Moiety of the Manor of *D.* and that *B* is his Heir, and the Escheator returns the Office, that *A* died seised of the whole Manor; and held, 1. That *B* may have an Action on the Case against the Escheator for this false Return;

for the Commission does not make him a Judge, he is only an Officer. But an Action on the Case does not lie against a Judge of Record. 2 Seeing the Office found him seised of a Moiety only, his Returning that he died seised of the Whole, is sufficient to give the Action: And yet if the King has a Moiety, he shall have the Whole.

Writ of Breaking the Pound.

Under Escheator of his own Authority return another Officer without Inquest, &c. and disturbeth the Possession of the second Grantee, the second Grantee shall have a Writ of Disceit against the Under Escheator: And so if the Escheator of his own Authority have so done without taking any Inquest, &c. according to the Course of the Law; and these Writs are in the Register.

And thereby it appeareth, that an Escheator may have an Under Escheator as well as the Sheriff may have an Under Sheriff.

And also it appeareth, that an Escheator shall be punished, although he be an Officer of Record, if he return any Office, *virtute Officii*, which he hath not taken any Inquest to inquire of the same: And the Process in the Writ of Disceit is Attachment and *Disstringas*.

Writ de Parco fracto.

A Writ of *Parco fracto* lieth where a Man distraineth Cattle for Damage-feasant, or for Rent or Service, and put them into the common Pound, or into another Pound or Place, which shall be said to be a lawful Pound; and he who hath Property in the Cattle, or other Person taketh the Cattle out of the said Pound, and driveth them where he pleaseth: He who distraineth him for, &c. shall have the Writ *de Parco fracto*.

If a Man sendeth his Servant to distrain for Rent or Services, and the Servant distraineth the Cattle, and impoundeth them, and a Stranger taketh them out of the Pound, the Master shall have the Writ *de Parco fracto*, and not the Servant, for it is the Master's Pound.

5 H. 7. 9.
It is a Pound
as well as if
it were in his
feveral.
Fairf. contra.
33 H. 8. pl. 56.

If a Man distrain for Rent or Services, or for Damage-feasant, and put the Cattle in the Land or Close of a Friend with his Licence, and he who owneth the Cattle taketh them out of the said Close, he who distraineth them shall have the Writ *de Parco fracto*, and not he whose Close it is: For who owneth the Close, ought to have an Action of *Quare clausum fregit*, &c. for that it is not his Pound, but the Pound of him who distraineth the Cattle; and the Form of the Writ is,

The King to the Sheriff of Lincolnshire, greeting: If A. &c. then put, &c. B. to shew wherefore, whereas the said A. took certain Beasts in his Damage at N. (or thus, the Beasts of the aforesaid B.) and impounded them there, according to the Law and Custom of our Realm, the aforesaid B. with Force and Arms broke that Pound, and took and led away the Beasts aforesaid, and other Wrongs to him did, to the great Damage, &c.

And note, That this Writ is *vi & armis*, and he shall not shew in the Writ what Kind of Cattle they are, nor to whom the Property of the Cattle doth appertain, if that he please not so to do.

And if a Man send his Servant for to distrain for Rent or Services, or for Damage-feasant, then the Form of the Writ is such:

To shew wherefore, whereas the said A. caused a certain Ox (or certain Beasts) to be taken in his Damage at N. by B. his Servant, and he the said B. there impounded that Ox (or thus, those Beasts) according to the Law and Custom of our Realm of England, he the said C. with Force and Arms broke that Pound, &c.

Or

Or thus for an Abbot; *To shew wherefore, whereas the said Abbot, in his House in the Suburbs of Lincoln, by Friar I. Keeper of our Cell of Saint Mary Magdalen without Lincoln, certain Beasts, &c. Otherwise for a Default in the Lord's Court; Wherefore, whereas the said A. in his Fee at N. caused to be taken by his Servant the Beasts of the aforesaid B. for a certain Default which the same B. made in the Court of him the said A. against E. in a Plaint which was in the same Court between, &c. by Consideration of the said Court, and the said A. impounded those Beasts according to, &c. the aforesaid B. with Force and Arms, &c.*

H If a Man do distrain for Amercement in a Hundred, and impound the Cattle, and the other taketh them out, the Writ shall be,

Wherefore, whereas the said A. by B. and C. his Bailiffs of the Hundred of N. caused to be taken certain labouring Beasts of him the said F. at S. within the Precinct of the Hundred aforesaid for a certain Amercement, in which the said F. was amerced in the same Hundred, to be levied to the Use of the said A. and the said B. and C. impounded those Beasts, &c.

And in this Writ he ought to shew, that the Property of the Cattle were in him who was amerced, because he cannot distrain the Cattle of other Men for this Amercement; but for Rent or Service it is otherwise. For the Party may distrain the Cattle there levant and couchant upon the Lands (a). 41 Ed. 3. 26.
47 Ed. 3. 13.
12 H. 6. 15.
[101.]

If the Queen do distrain for a Debt or Amercement due unto her, and impound the Cattle, and a Stranger doth break the Pound, and take them out, then she shall have a Writ, and the Writ shall be such:

The King to the Sheriff of S. greeting: Put by Gages, &c. P. of E. and C. of D. that they be, &c. to answer as well to us as Ann Queen of England, wherefore, whereas W. of R. Bailiff of the Liberty of the said Queen of the Hundred of C. (in which the said Queen, as in the rest of her Lands and Tenements granted to her by us, hath the Return of all our Writs, as belongs to the said W. by reason of his Office) by Virtue of the Return of a certain Writ made by him for you within the Liberty aforesaid for a certain Debt, to be levied to the Use of the said Queen upon the said P. by Summons of our Exchequer, took the Beasts of the said P. at B. and impounded them there, according to the Law and Custom of our Realm, the aforesaid P. and C. with Force and Arms broke that Pound, and took and led away the aforesaid Beasts, and committed other Wrongs there, in Contempt of us, and to the great Damage of the said Queen, and against our Peace, &c.

A And when the King sueth any Writ, the Writ shall not say, *&c. Si Georgius Rex Mag' Brit' fecerit te secur'*, &c. for he shall not (b) find Sureties as a common Person shall do, for he shall not be amerced, as appeareth by the Writ before. 18 Ed. 3. 21.
Lit. 133.

B If the Husband do distrain for Rent or Services which he hath in Right of his Wife, and a Stranger taketh them out of the Pound, the Husband shall have the Writ *de Parco fracto* in his own Name; but yet it seemeth he may sue the same in his Name, and in the Name of his Wife, and join the Wife with him; *tamen quere.* 15 Ed. 4. 9.

(a) See 10 H. 7. 21. 15 H. 7. 19. 6 Ed. 4. 8. *contr.* 4 Ed. 3. 35. *contr.*
of an Infant, 3 Aff. 25.

(b) And so it is

Writ of Rescous.

THE Writ of Rescous lieth where a Man doth distrain for Rent or Services, or for Damage-feasant, or would impeach or impound the Cattle, and the other Party doth rescue them, or taketh (a) them from him, then he shall have this Writ of Rescous; and the Writ is such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then put, &c. to shew wherefore, whereas he the said A. took in his Fee at S. certain Beasts; or thus, certain Beasts of the said B. and would have impounded them there according to the Law and Custom of our Realm of England, the aforesaid B. with Force and Arms rescued the Beasts aforesaid, (b) and other Wrongs, &c. Or thus; Wherefore, whereas the said A. caused to be taken certain Beasts by C. his Servant in his Fee at S. for Customs and Services due to him; or thus, caused to be taken a certain Cart of him the said B. and the said C. would have carried that Cart unto the Manor of the said A. of S. according to, &c. the said B. with Force and Arms made an Assault upon him the said C. and the said Cart, &c. took away from him, &c.

And so it appeareth he may join in a Writ of Rescous for the Assault and Battery of his Servant.

And if he do distrain Cattle, and other dead Chattels, then the Writ shall be, **E**
To shew wherefore, whereas he the said A. took the Beasts and Chattels of the aforesaid B. in his Fee at S. for Customs and Services due to him, and would have impounded these Beasts, and detained the Chattels aforesaid in the Name of a Distress, according to the Law and Custom of our Realm of England, the said C. (c) rescued these Beasts, and took away from him the said A. the Chattels aforesaid, and other Wrongs, &c.

And if he do distrain for a Rent-charge, the Writ is such:

Wherefore, whereas he the said A. in a certain Tenement of him the said B. at N. bound for a certain yearly Rent by the Writing of him the said B. charged with the Distress of the said A. took certain Chattels of the said B. for the Rent aforesaid, being in arrear, and would have there detained them in the Name of a Distress, according to the Law, &c. the aforesaid B. took away from him the Chattels aforesaid, &c.

And note, That if a Man send his Servant to distrain for Rent or Service, **F**
 or Damage-feasant, and Rescous be made upon the Servant, the Master shall have the Writ of Rescous, and not the Servant; for the Wrong is done unto him who ought to have the Rent or Service, or is damnified, &c.

If a Collector or Sub-collector distrain for Fifteens, and Rescous be made, he shall have the Writ of Rescous; and the Writ shall be such:

*If W. of S. the Sub-collector of the Tenths of the Town of S. last granted to G
 us by the Citizens and Burgeffes of our Realm, &c. shall make you secure, &c.*

(a) Note; One may have one Writ of Rescous for rescuing of several Distresses taken for several Tenures. 3 H. 6. 52. adjudged.

(b) Note; He ought to count for what Rent or Services, &c. he took them, and therefore he

ought to count of the Terms of Payment. 8 H. 4. 1. *Rast Entr.* 580.

(c) Without shewing in what Place the Rescue was, for it shall be intended in the Place where taken 30 Ed. 3. 15. But it shall be shewn in the Count. 10 Ed. 4. 15.

then put, B. &c. to answer as well to us as the aforesaid W. wherefore, whereas the same W. took certain Chattels of him the said B. for a certain Sum of Money assessed upon Account of the Tenths aforesaid, and in our Name would have detained those Chattels in the Name of a Deputy, the aforesaid B. there assaulted the said W. and beat him, and took away from him these Chattels, &c. and other Wrongs, &c. in Contempt and Prejudice of us, and to the great Damage of the said W. and against our Peace, &c.

And if the Bailiffs or Officers do arrest certain Persons, and others rescue them from the Officers, then he who caused them to be arrested, shall have the Writ of Rescous; and the Writ shall be such:

Wherefore, whereas the said Prior by the Charter of Lord Edward, &c. which we have inspected, ought to have at W. his free Court of all his Men, as well Burgeses as others, and of all Pleas and Plaints and Attachments whatsoever happening, together with Prizes and all other Things belonging to his Men; and the same Prior caused to be attached by B. his Bailiff at F. R. and M. the Men of him the said Prior, for divers Trespasses by them done at T. within the Liberty of the aforesaid Prior (as it is said) against our Peace, whereupon Hue and Cry was there levied, and the said Prior would, according to Law and Custom, have there detained them the said R. and M. to undergo Justice in this Behalf in the Court of the said Prior, the aforesaid B. and L. with Force and Arms took the aforesaid R. and M. not justified concerning the said Trespasses, out of the Custody of him the said B. and permitted them to go where they would, and other Wrongs, &c. to the great Damage of him the said Prior, and to the manifest Hurt of his Liberty, and against our Peace, &c.

And note, That if the Bailiff or Sheriff, or other Officer of the King, do Infra G. arrest a Man, or distrain him for Debt, or other Service due to the King, and Rescous is made, then the Bailiff or other Officer shall have the Writ of Rescous in his own Name, and not the King's, and the Writ shall be such:

If T. Bailiff of the Hundred of F. shall make you secure, &c. then put, &c. to answer as well to us as the aforesaid Bailiff wherefore, whereas the same Bailiff, according to the Duty of his Office, took W. (whom we commanded to be taken by our Sheriff of the County aforesaid by our Writ of Judgment to him directed) at K. by Virtue of our Mandate aforesaid, and would have led him unto our Castle of R. there to remain in our Prison, the aforesaid R. and S. with Force and Arms rescued him the said W. at the Town of K. and other Wrongs, &c. in Contempt of us, and to the great Damage of the aforesaid Bailiff, and against our Peace: And have, &c.

A And if the Bailiff would arrest any Person, and he himself do rescue himself, and will not obey the Arrest, then the Writ shall be such:

If H. of R. Bailiff of our Town of S. shall make you secure, &c. then put B. &c. wherefore, whereas he the said H. according to the Duty of his Office, attached the aforesaid B. for a certain Hue and Cry levied upon him by W. of S. at V. on the Complaint of the aforesaid W. according to the Law and Custom of our Realm, the aforesaid B. not permitting himself to be justiced, with Force and Arms broke the Attachment aforesaid, and there made an Assault upon him the said H. &c.

B And if the Sheriff send unto the Bailiff of the Liberty to levy Fines and Amercements for the King, and the Bailiff distrain certain Cattle, and the Rescous is made: Now the Lord of the Liberty shall have a Writ of Res-

cous of the Rescous done to the Bailiff, and for the Battery and Assault made upon him, and for the Loss of his Service, and all in one Writ.

Post. G.

If the King's Bailiff do distrain for Rent, and Rescous is made, the Bailiff C shall have the Writ of Rescous, and not the King.

And if a Man sue forth an Execution, and hath a *Capias* directed to the Sheriff to arrest the Party, and the Sheriff make his Warrant to the Bailiff of the King's Liberty where the Party dwelleth, to arrest him, by which the Bailiff doth (a) arrest him, and others do rescue him from the Bailiff, he who sued forth the Writ of Execution, shall have the Writ of Rescous against him that rescued him, as appeareth by the Register; but yet it seems reasonable that the Bailiff have a Writ of Rescous in such Case; for some say the Bailiff shall be chargeable to him, who sued forth the *Capias*, &c. and for the Arrest: *Tamen quere.*

And it appeareth by the Register, That if a Writ be directed unto the Sheriff, to levy the Expences of the Knights at the Parliament, and the Sheriff D make his Warrant unto the Bailiff of the Liberty of the Bishop of *Ely*, to levy the Sum assessed, &c. for which the Bailiff by his under Bailiff doth take certain Cattle and would impound them, and other Persons do rescue the Cattle and beat the Under-Bailiff, that the Bailiff shall have the Writ of Rescous against them; and there it seemeth that the Knights which should have the Money, shall not have a Writ of Rescous for the same Rescous, because it is not a Duty unto them by any Person certain, but to be levied of the Inhabitants of the Towns.

39 Ed. 3. 35.

And if the Lord do distrain his Tenant's Cattle, and a Stranger's Cattle, E for Rent or Service behind, when there is not any Rent or Service behind, the Stranger may rescue his own Cattle, but not the Tenant's, as it seemeth. And that as it seemeth by the Statute of *Marlbridge*, cap. 3. which willeth, *Non ideo puniatur Dominus per redemptionem*, yet the Opinion of *Thorpe M.* 31 Ed. 3. is contrary; for he saith, the Stranger may rescue as well the Tenant's Cattle as his own. *Quere. (b)*

Vi. Lit. 52.
9 H. 7. 4.

And Rescous is not, but where he hath the Possession of the Cattle, or the F Thing of which the Rescous is supposed to be made: For if a Man come to arrest a Man, or to distrain, and he is disturbed to do the same, he shall not have a Writ of Rescous, but an Action on the Case. (c)

And the King shall not have the Writ for a Rescous done to his Officer, G qd' vide P. 20 Ed. 3. but he may cause him to be indicted for the same. *Vid. supra C.*

(a) Note; The Sheriff may return a Rescue, and at that Return the Party may have his Answer. 3 H. 7. 11. *Dyer* 212. and *Westm.* 2. c. 40. And yet if the Rescous be at any Time after the Arrest, the Sheriff shall be charged in Debt on an Escape, if it were not made by the King's Enemies; and the Sheriff shall have his

Remedy over by Action on the Case. *Dyer* 241.

(b) And note 4 Ed. 6. *Distress* 74. *contr.* See 6 Ed. 4. 11. 5 Ed. 4. 10. 11. 19 H. 7. 48 Ed. 3. 33. 3 H. 4. 22. 22 H. 6. 37. *contra.* 29 Ed. 3. 35. 4 Co. 11. b. *Berwill's Case.*

(c) See 21 H. 7. 40. 44 Ed. 20.

Audita Querela.

H THIS (a) Writ of *Audita Querela* lieth as well upon Matter in Fact, as upon Matter in Writing, as after appears. And this Writ shall be directed unto the Justices of the Common Pleas or King's Bench, and lieth where *A.* and *B.* come before the Mayor, &c. and *B.* doth acknowledge himself to be bounden in one hundred Pounds to *A.* in the Name of *C.* before the Mayor, and affirmeth his Name is *C.* and afterwards *C.* is arrested by Force of this Bond and Statute, and taken in Execution: Now *C.* shall have *Audita Querela* against *A.* and *B.* and the Form is such:

The King to his Justices of the Bench, greeting: We have received the Complaint of C. containing that A. and B. by Collusion before had between them at W. contriving craftily to delude our Court, and to oppress the aforesaid C. lately appearing before C. Mayor of our Town of Southampton, and R. Clerk, deputed to take Recognizance of Debts at S. asserted upon Corporal Oath, that he the said C. was present to perform this, by which he the said B. under the Name of the said C. acknowledged himself to owe to the aforesaid A. one hundred Pounds, to be paid at a certain Time now past, before the said Mayor and Clerk, according to the Form of the Statute for Merchants lately set forth at Aeton Burnel, and afterwards him the said C. because he paid not the said one hundred Pounds to the said A. at the Time aforesaid, falsely and maliciously procured to be taken by the aforesaid Mayor, and kept safely in our Prison, until he should fully satisfy the said A. of the said one hundred Pounds, to the great Damage of him the said C. and in manifest Deceit of our Court; whereupon the said C. hath besought us, that we will administer to him a fit Remedy: We command you, that having heard the Complaints of him the said C. in this Behalf, and having called before you the aforesaid A. and B. and the said Mayor and Clerk, and having heard the severall Reasons of the Parties thereupon, touching the Falsity, Malice and Deceit aforesaid, you cause to be done to the said C. full and speedy Justice, as of Right and according to the Law and Custom of our Realm you shall see ought to be done. Witnesses, &c.

A If a Man lease Lands unto *A.* for Life, and afterwards by Fine grants the Reversion unto *B.* in Fee, and dieth, and the Heir of the Recognizor, and one *L.* by Covin betwixt them (b) sue a *Præcipe in Capite* against the said *A.* supposing the Land to be holden of the King, whereas it is not holden of the

(a) Note a Diversity, where the Discharge comes by Determination of the Estate, there the Conusor needs no *Audita Querela*. For if Tenant in Tail acknowledges a Statute, which is extended, and he dies, his Issue may avoid it by Entry. 38 Aff. 5. 43 Aff. 18.

(b) See 17 Ed. 3. 60. *A.* Tenant for Life, Remainder to *B.* in Tail, *C.* by Covin between him and *A.* brings a Formedon against *A.* and *B.* supposing them Jointenants, and one *D.* answers as Attorney for *B.* and Process is continued until they make Default after Issue joined, whereupon Judgment final is given, and *B.* shews this, and

prays that it be entred, for that it is within the Year: And it was entred on Record. 2. And also agreed, That he shall have Restitution; but *A.* shall not, for he hath forfeited his Estate. 3. That he shall not have Restitution on a general Bill of Disceit, but ought to sue an *Audita Querela* in Chancery on his Case, *tam super Restitutione ten'ti quam pro deceptione puniendâ.* 17 Ed. 3. 46. and so note Restitution at least, where the Demandant was Party to the Disceit. See 21 Ed. 3. 45. 19 H. 6. 44. 1 H. 4. 5. Stat. 21 Jac. 1. cap. — 17 Ed. 3. 76. Register 114, 115.

King, but of another Person: And in this *Præcipe in Capite* they cause one *F.* to appear as Attorney for *A.* and to join the Mife in the faid Writ; and afterwards the Attorney by Covin doth make Default, for which Judgment is given againft *A.* Now upon the fame Matter he fhall have an *Audita Querela* directed unto the Juftices of the Common Pleas, commanding them to proceed as well for the Reftitution of the Land, as upon the Difceits, and to do speedy Juftice, as of Right according unto the Custom of the Realm they ought to do; and the Writ is fuch:

The King to his Juftices of the Bench, greeting: A. hath fhewed unto us, that whereas he lately held the Manor of C. with the Appurtenances, in the County of L. for the Term of his Life, of the Demife of I. and H. Son and Heir of the aforefaid I. granted the Manor aforefaid to have to T. of S. and the Heirs of the Body of him the faid T. iffuing after the Death of the faid A. (as it is faid) by a Fine levied thereof in our Court before our Juftices of the Bench; B. (Son and Heir of the aforefaid H.) and L. by Collufion before had between them, contriving to amove the faid A. from the Manor aforefaid, and to exclude the aforefaid T. from the Reverfion of the Manor aforefaid, have obtained in our Chancery our Writ in the Name of the faid B. againft the faid A. and T. (which is called a Præcipe in Capite) of the Manor aforefaid, to our Sheriff of Leicefterfhire, returnable at a certain Day now paff, as if the faid Manor were holden of us in Chief, whereas it is not holden of us, and our faid Writ was returned by the Sheriff aforefaid, that the faid A. and T. were summoned to be before you at the Day aforefaid, according to the Form of the faid Writ, and falſely and maliciously procured a certain Perſon unknown, who aſſerted himſelf to be named R. of S. to appear before you in the Bench aforefaid, as Attorney for the faid A. and T. to gain or loſe in the Plea aforefaid; they the faid A. and T. being wholly ignorant of the obtaining the Writ, of the Summons, and of the making the Attorney aforefaid in their Name, as is premifed; and the faid Attorney appearing before you at the ſame Day, put himſelf upon our Great Aſſiſe, and prayed Recognition to be made, whether they the faid A. and T. had greater Right to hold the faid Manor with the Appurtenances, as they have holden it, or the aforefaid B. to have the faid Manor as he hath demanded it, by which, through the Default which they the faid A. and T. afterwards made in the ſame Court, it was conſidered by you there, that the aforefaid B. ſhould recover his Seifin of the Manor aforefaid with the Appurtenances againft the aforefaid A. and T. to hold to him the faid B. and his Heirs quiet of the faid A. and T. and their Heirs for ever; by Pretence of which ſaid Conſideration the aforefaid A. is perpetually amoved from his Manor aforefaid with the Appurtenances, to the great Damage of him the faid A. and the manifeft Deceit of our Court; whereupon the aforefaid A. hath beſought us to adminiſter to him a fit Remedy: We being unwilling that ſuch Colluſion, Malice and Deceit ſhould paſs unpuniſhed, command you, that having heard the Complaint of him the faid A. in this Behalf, and having called before you the aforefaid B. and L. and others whom you ſhall ſee fit to be called in this Matter, and having heard the Reaſons of the ſeveral Parties thereupon, you further cauſe to be done full and speedy Juſtice to the aforefaid A. (a) as well upon the Reſtitution and Recovery of the faid Manor, as upon the Colluſion, Malice and Deceit aforefaid,

(a) See 41 Ed. 3. Execution 37. 16 H. 7. 16. 47 Ed. 3. 4. 13 H. 7. 22. 45 Ed. 3. 17.

as of Right and according to the Law and Custom of our Realm you shall see ought to be done. *Witness, &c.*

And by this Writ it seemeth the Justices ought to make void the Recovery, if they find the Disceit, &c. yet it seemeth they may not so do, 17 Ed. 3. 60. 21 Ed. 3. 45. 19 H. 6. 44.

- B (a) If a Man be bound in a Statute-merchant, and afterwards maketh a Feoffment of Parcel of his Lands unto another Man, and of other Parcel unto another, and the Recognizee sueth Execution upon the Statute, and hath Execution against one Feoffee, that Feoffee shall have an *Audita Querela* (b) against the other Feoffee, to shew Cause why he should not have Execution of his Lands, as of the Lands which himself hath. 9 H. 4. 4. 32 Ed. 3. Execut. 127. 45 Ed. 3. 51. 16 Eliz. Dyer 3. 37. 4 Ed. 3. 522. & 3 Eliz. Dyer 193, 194. Whaley's Cafe.
- C If a Man be bounden in a Statute-merchant, and certain Indentures of Defeasance are made of the said Statute, and afterwards the Conufee doth arrest the Recognizor, and imprisoneth him, and taketh the Defeasance from him, and then sueth Execution upon the Statute, the Recognizor shall have an *Audita Querela* against him upon the whole Matter.
- A If at the *Nisi prius* in Trespass it be found for the Plaintiff, and Damages assessed, and before the Day in Bank the Plaintiff release unto the Defendant all Actions and Demands, and afterwards (c) prayeth Judgment, and sueth Execution thereupon; the Defendant upon that Release shall have an *Audita Querela*. [104.] 40 Aff. 23. 44 Aff. 15. Holt. Br. Audita Querela 43. 9 H. 5. 1. 53. Release

Br. Audita Querela 16. 36 H. 6. 24. 21 H. 7. 83. 3 H. 4. Br. Audita Querela 37. Fitz. Release of all Actions is not sufficient Matter to have Audita Querela.

- B And the Heir of the Recognizee may sue an *Audita Querela*, if he have Matter in Writing to discharge the Execution. 48 Ed. 3. 5. 15 H. 8. 5. V. 2 & 3 Eliz. Dyer 193. 43 Ed. 3. 38. Finchden.

(a) See 33 Ed. 3. *Audita Querela* 38. 11 Ed. 3. Brief 266. 29 Ed. 3. 7.

(b) See 13 Ed. 3. Execution 127. and against the Conufee, and thereby he shall be restored to the Issues, and the Execution defeated. 45 Ed. 3. 17. 29 Ed. 3. 7. where there are two Conufors, and the Lands of one only are delivered, who sues a Writ to the Sheriff to deliver the Lands, &c. of the other in Discharge and Aid of the former, who returns *Non est inventus*, and that none came on the Part of the Conufee; and now he prays Remedy, and has a *Scire facias* against the Conufee to take his Suit against the other; and if the Conufee knows not what to say, or does not appear, he shall have Execution against the other, or the Party shall be discharged, having Regard to his Part or Portion of the Debt Dyer 193. *Gascoin* and *Whaley*.

If the Conufor enfeoffs the Conufee of Part of his Land, and his Son of the Residue, and dies, and the Conufee sues Execution against the Son, the Son may have an *Audita Querela*, and dis-

charge the Execution *eadem Causa*, but no Costs or Damages. So if the Lands of one of the Feoffees only are delivered in Execution, he may have an *Audita Querela*, and a *Scire facias* against the other, and it shall be no Plea in Abatement of the Writ, that there are other Feoffees to be contributory: For he is bound at his Peril to take Notice of all such as are contributory.

Note the Diversity: If the Conufor of a Statute-merchant enfeoffs divers severally, and the Lands of one only is taken in Execution, he shall have an *Audita Querela* against the Conufee, to make the others contributory, and the Writ shall be directed to the Justices *de Banco*; but of a Statute Staple, it shall be in Chancery by *Audita Querela* directed to the Chancellor, or by a *Scire facias* directed to the Sheriff, *Quare Tenementa extensa una cum proficuis medio Tempore, &c.* Dyer 331, 332.

(c) For he cannot plead this at the Day in Bank, and before Judgment he cannot have an *Audita Querela* to stay Judgment. 9 H. 5. 1.

(a) If a Man be bound in a Statute-merchant or Staple, and afterwards C payeth the Money according to the Statute, and hath the Statute delivered unto him, and cancelleth the same, and afterwards the Recognizee forgeth a new Statute in the Name of the Recognizor, the Recognizor upon the Statute cancelled shall have an *Audita Querela*.

43 Ed. 3. 27. (b) If a Statute-merchant or Staple be made by one unto another, and deli- D
cont. 12 H. 4. vered into the Hand of a Stranger to deliver upon Conditions performed,
6. Calp. cont. and the Stranger doth deliver the Statute before the Conditions performed, and the Conufee fueth Execution thereupon, the Recognizor shall have an *Audita Querela*.

12 H. 4. 15 If a Man fueth forth an Execution upon a Statute, and hath Execution, E
and 16. and afterwards grant over his Estate, the Recognizor shall have an *Audita*
Frankford. *Querela* against the Grantee without naming him who sued the Execution, if he have Matter in Writing for to sue, &c.

41 Ed. 3. A Man may sue an *Audita Querela* against the Recognizee, because he hath F
Audita Que- purchased a Manor unto which the Recognizee is a Villain Regardant, and
rela 18. yet he may enter and feize the Recognizee without such Suit.

46 Ed. 3. 28. (c) And a Stranger who made not the Recognizance, nor was Tenant of G
Fulthorp. the Land at the Time of suing forth of the Execution, shall have an *Audita*
17 Aff. 24. *Querela*.
Audita Quer. 20. 10 Ed. 3. 25. Error 71. the Feoffee had Error.

Querela,

(a) *Contra*, if the Conufor himself comes into Chancery, and prays a Re-extent, and it seems this Writ lies, if the Statute be delivered instead of an Acquittance, but is not cancelled. 43 Aff. 18.

(b) See 7 H. 6. 42. *A.* makes a Statute-Staple to *B.* and delivers it to *C.* to be redelivered on Condition, &c. *B.* recovers by an erroneous Judgment, where *A.* was warned, and the Deed is delivered to him by *C.* *B.* sues Execution, and *A.* brings Error. Resolved, 1. That pending the Errors and Execution, he cannot have a *Superfedeas*. 2. If *A.* reverses the Judgment, this does not defeat the Execution had on the Statute, but it seems he is put to his *Audita Querela*.

(c) If Execution be awarded against the Feoffee, he shall have an *Audita Querela*, on a Matter of Discharge, made either before the Feoffment, or after. 7 Ed. 3. 27. *John S*—— Case. Where he shall have a Writ of Error, see 17 Aff. 24. *Chester's* Case; but if the Execution be made, and after the Extent, the Conufor makes a Feoffment, it seems the Conufee shall not have an *Audita Querela*, on a Cause or Matter of Discharge made before; as if after the Extent, and before the Feoffment, or before the Extent, the Conufee will acquit the Debt, and so seemed the better Opinion. *Mich.* 44, 55 *Eliz.*

In Chancery in an *Audita Querela* brought by *Harden* and *Vavisor*, and their Wives, against *Smith*, Executor of *Riggs Moor*, Case 737. But on a Matter happening after the Feoffment, he shall have an *Audita Querela*, as on a Release, &c. (and so here *G.*) and 17 Aff. 24. a Feme shall have a *Scire facias ad computand'*; and *Note*, 1. For whom it lies. 2. Against whom it lies. 3. When it lies. 4. The Effect of the Suit. It lies by the Grantee of a Reversion, with Attornment, &c. and there he shall have account *ab initio*. 6 Ed. 3. 53. *I. de Charlton's* Case. 25 Ed. 3. 53. *John Venner's* Case. So if one acknowledges a Statute, and afterwards acknowledges a second Statute, the second Conufee shall have a *Scire facias* against the first, to receive the Monies which are to be levied, if the Tenant of the Freehold will not sue. 38 Ed. 3. 12.

2. If the Conufee has assigned but a Part of his Estate, the *Scire facias* shall be brought against the Conufee only, and not the Lessor; *Quers*. But if he assigns the Whole, and the Assignee levies the Whole, or the Plaintiff will pay the Residue, the Writ lies against the Assignee alone, and he shall retake (or repay) the Monies; but if he has levied the Whole and afterwards assigns, the Writ lies against both. 50 Ed. 3. 46, or 16. 38 Ed. 3. 12. 21 Ed. 3. 1. 46 Ed. 3. *Scire facias* 134. 15 Ed. 3. *Respond.* 3. But
one

Querela, if he have Matter of Discharge in Writing. *Vide* 11 *Ed.* 3. *Litt. Aff.* and there it is said the same is given by the Statute. The Feoffee shall not have a Writ of Error, &c. Nor the Feoffee of the Conufor of Part of the Lands shall not have an *Audita Querela* until his Lands be taken in Execution.

H If a Man sueth *Audita Querela* against the Conufee, and sheweth a Statute cancelled; and faith the same was delivered (a) to him in lieu of Acquittance, the Recognizee may shew the true Statute, and shew that the Statute shewed which was cancelled was a forged Statute, and thereupon he shall have a Writ unto the Justices in the Nature of *Audita Querela*, commanding them that they fend for the Mayor and the Clerk, and for the Parties, and for to do Right; and the Examination of the Mayor and Clerk shall try and end the Matter; *quod vide M.* 11 *Ed.* 1.

18 *Ed.* 3. 36. *Audita Querela* 9. The Conufor must shew the Statute, otherwise he shall not have the Plea.

I Upon a Recovery of a Debt, if he sue a *Scire facias*, and the Sheriff return *Nihil*, by which an Execution is awarded, the Defendant shall have *Audita Querela*, if he have a Release or Acquittance, because he was not warned: But if the Sheriff hath returned him warned, he shall not have *Audita Querela* upon such Release, &c. because he might have pleaded the same upon the Return of the *Scire facias* (b).

48 *Ed.* 3. 20. 12 *H.* 4. 4. per Hungerf. 21 *Ed.* 3. 15. Hil. *Audita Querela* 18.

one of them may answer without his Companion, and yet the Conufee may release, notwithstanding the Assignment *Vide ibid.* See also 17 *Aff.* 52. 9 *Ed.* 4. 13. 12 *H.* 8. 8. 18 *Ed.* 3. 25. *contr.* 17 *Aff.* pl. 24. *contr.* 25 *Aff.* 8. 17 *Ed.* 3. 43. 4 *H.* 6. 72. 21 *Ed.* 3. 46. *contr.* See 17 *Ed.* 3. 49.

And *Note*; This Writ lies in Case of a Statute after the Debt, and Damages levied by the casual Profits, by Course of Time, or by Render of the Money, and he shall recover his Land. See 47 *Ed.* 3. 11. 32 *Ed.* 3. *Scire facias* 101. 46 *Ed.* 3. *Scire facias* 134. *Vide Registr. Judic.* 73. but not to re-have the Land, and also answer for the Waste. 21 *Ed.* 3. 26. 30. For it seems he may have a Writ of Waste, &c. *Vide F. N. B.* 58. *H.* acc. *Quere.* And *Note*, If by the casual Profits, he has levied more than his Debt and Damages, the Surplus shall be paid to him in Reversion, if it was levied in his Time, or at least as much as was so levied over. 21 *Ed.* 3. 30. And the Tenant shall account to the Grantee *ab initio*; for perhaps the Term was incurred before the Purchase of the Reversion. 6 *Ed.* 3. 63. But he shall not account according to the true yearly Value, but according to the Extent; for if the Lands are extended too low, the other may have a Re extent at the first Day in Court. 22 *Aff.* 44. *Extent* 3. But afterwards, he has no Remedy but to pay the Money. See 19 *Ed.* 3. *Extent* 12. per *Green* 32 *Ed.* 3. *Scire facias* 101. And therefore on a *Scire facias ad computandum*, he ought to shew what

the casual Profits are, *ibid.* yet see 20 *Ed.* 3. *Extint* 18. *contr.* per *Wilby.* And *Note*; The Writ is sometimes *ad computandum*, against the Opinion in 22 *Aff.* 44. and sometimes *ad computand*, and to receive the Residue of the Money, and to re-have the Land.

(a) And in such Case Execution shall be awarded, if the Conufor does not shew the true Statute. 18 *Ed.* 3. 36. See 17 *Ed.* 3. 49. 21 *Ed.* 3. 46. *contr.*

(b) See the Case (18 *Ed.* 3. 36.) where it is also held, that if a *Venire facias* on an *Audita Querela* be not sealed, yet the Party may appear and plead. 21 *Ed.* 3. 13. See a *Scire facias* by a Bishop against an Executor; the Sheriff returns [*Clericus & beneficiatus, &c.*] Whereupon a *Fi Facias* issued to the Ordinary; (*Note*; He was not charged as Executor,) and he sequesters; the Executor sues an *Audita Querela*; and resolved, 1. That though the Executor had a Co-Executor, yet if he alone be grieved, he alone may have this Suit. 2. That this Suit lies, notwithstanding the *Scire facias*, 21 *Ed.* 3. 48. If both Plaintiff and Defendant make Default at the *Scire facias*, yet *Audita Querela* lies on a Release made before; *contr.* if the Defendant makes Default, and the Plaintiff appears. 24 *Ed.* 3. 24. See 8 *H.* 6. 1. per *Martyn* 12 *H.* 7. *Kelw.* 24. See *Der* 203. an *Audita Querela* after Judgment against the Plaintiff, for the Executors of a Testament, which was afterwards annulled. See 48 *Ed.* 3. 20.

(a) And

- 6 Ed. 7. Eliz. Dyer 232. Rule that the Writ doth not lie after he cometh of full Age. 13 Ed. 3. 2. 18 Ed. 3. 8. 15 Ed. 4. 5. Brin. acc. 20 Ed. 3. Aud Quer. 27. 20 Ed. 3. Aud Quer. 28. 25 H. 8. Br. Aud. Quer. 39.
- (a) And if an Infant bind himself in a Statute-merchant or Staple, he shall have an *Audita Querela* during his Nonage, to avoid that Statute, and afterwards he shall have an *Audita Querela* after his full Age, to avoid that Statute upon that Matter in Fact.
- And so if a Man make a Statute-merchant or Staple by Durefs, he shall have an *Audita Querela* to avoid that Statute by this Imprisonment.
- (b) If two be severally bounden in two severall Statutes, and afterwards the Recognizee by Deed doth release both the Statutes to one of them, if he sue Execution against them severally, they shall join in *Audita Querela* upon that Release.
- If the Recognizor infeoff a Stranger of Parcel of the Lands, and afterwards infeoffeth the Recognizee of another Parcel of the Lands, and afterwards the Recognizee sueth Execution against the Recognizor and the Feoffee; the Feoffee shall have an *Audita Querela* against the Recognizee, and discharge his Lands, because that the Recognizee hath discharged his Parcel of Land which he purchased by his own Act (c).
- 24 Ed. 2. 24. Br. Aud. Quer. 22. 9 H. 5. 1.
- Upon an *Audita Querela* sued he shall have a *Superfedeas* in the same Writ to stay Execution, &c. But if he be (d) Nonsuit, he may have a new *Audita Querela*, but then he shall not have a *Superfedeas* to stay Execution.
- And a Man shall not have an *Audita Querela*, supposing the Recognizee will sue Execution, but it ought to be alledged in the Writ, that he hath in *facto* sued Execution.
- (e) If a Man sue *Audita Querela* upon a Release, and afterwards is Nonsuit, he shall not have an *Audita Querela* upon new (f) Matter, *ut dicitur* 43 Ed. 3. But it semeth the Law is otherwise; but he shall not delay Execution by a new *Audita Querela*.
- 43 Ed. 3. 28. Thorp. 24 Ed. 3. Aud. Quer. 11.
- If a Man doth comprehend two Matters in the *Audita Querela* to extinguish the Execution, yet the Writ is good, but the Plaintiff shall hold himself to one Matter, and the Defendant shall answer to that. And Variance betwixt the *Audita Querela* and the Record shall abate the Writ. But if there is a new *Audita Querela* sued according to the Record, he shall have a *Superfedeas* to stay Execution, &c. although he had before a *Superfedeas* in the other *Audita Querela*, which was abated.
- 44 Ed. 3. 36. 24 Ed. 3. 27. Br. Aud. Quer. 24.

(a) Note; It is necessary he bring it while under Age; but he shall not avoid it by Plea, saying he was within Age generally. 17 Ed. 3. 76. Dyer 132. 13 Ed. 3. *Audita Querela* 26, 27. 18 Ed. 3. 5. 29. 6 Ed. 3. 29. See *Kelw.* 10. per *Kb.* *Quære* 26, and 6 El. C. B. *Harrison and Worsley's Case*, Judgment reversed *durante Minoritate*. *Vide infra* C. Dyer 232. b. 13 Ed. 3. 182.

(b) It seems the Tenants in Common, &c. need not join in an *Audita Querela*, with the Tertenants. *Quære* 20 Ed. 3.

(c) *Vide infra* E. 11 H. 7. 4. 13 H. 7. 42. 7 H. 4. 31. 34 *Aff.* 15. 5 Ed. 6. (H. 6.) 72.

(d) Note; If the Conusee sues divers Certificates, and on one of them has a Writ returnable in C. B. and the Conusor purchases an *Audita Querela*, and has a Writ returnable in B. R. and the Party is taken thereon, he ought to sue a Writ to the Mayor and Clerk, to certify if he has other Statutes, and so shall be aided. 29 *Aff.* 29, viz. per *Audita Querel.*, *ibid.* 41. See 2 H. 7. 12. 33 Ed. 3. *Execution* 161. 9 H. 7. 16 H. 7, &c.

(e) See 17 Ed. 3. 27. 43 Ed. 3. 28. 24 Ed. 3. *Audita Querela* 11. and *ibid.* 29.

(f) See 33 Ed. 3. *Executors* 61.

- S** If a Man sue Execution upon a Statute-merchant, and hath a *Capias* returned in the Common Pleas, if the Feoffees or Parties will sue an *Audita Querela*, they ought to sue the same out of the Chancery, directed unto the Justices of the Common Pleas. V. 22 H. 6. 56.
- T** If a Man sue an Execution upon a Statute-merchant, as Executor unto another, the Party shall not have an *Audita Querela*, supposing in the Writ that he who hath such Execution is not Executor. See 29 *Ed.* 3. 99. 2 R. 3. 8. con. if the Testator be living.
- V** (a) And the Process in *Audita Querela* is *Venire facias* and *Distingas*, *Alias* and *Pluries distingas*, and if he return *Nihil*, or *Non est inventus*, he shall have a *Capias* against the Defendant. *T.* 81 *Ed.* 3. (b). Br. Aud. Quer. 41. [105.]
- A** A Man recovereth by Default in an Action of Waste, the Defendant sueth an *Audita Querela*, directed unto the Justices out of the Chancery, furnishing in the Writ that he was not summoned, nor attached, nor distrained; for which the Justices grant out of the Rolls in the Common Pleas a Writ of Disceit against the *Audita Querela*, which was but a Commandment to the Justices to do Right unto the Party, &c. *Trin.* 19 *Ed.* 3. And yet they shall proceed upon the Writ of Disceit, and not upon the *Audita Querela*. 48 *Ed.* 3. 1. He shall not have Capias, but Sicu alias. 12 H. 4. 6 and 15.
- B** (c) If a Man be bounden in a Recognizance in the Common Pleas, and afterwards doth release unto the Party, and then against his Release sueth Execution; then he shall there come into the Common Pleas, and shall sue an *Audita Querela* thereupon out of the Rolls. And so if one recover in the Common Pleas or King's Bench, Debt or Damages, and afterwards by his Deed releaseth the same, and afterwards sueth forth Execution upon the Recovery, the Party to whom he releaseth shall have *Audita Querela* out of the Common Pleas or King's Bench, where the Record is, and yet he may have an *Audita Querela* out of the Chancery, and so it shall be sometimes Judicial, and sometimes Original. 22 H. 6. 56.
- C** And if a Man be bounden in a Statute-merchant or Staple unto another Man, and afterwards the Recognizee make a Defeasance unto the Recognizor; now if the Recognizee sue Execution upon the Statute against the Form of the 46 *Ed.* 3. 3. 48 *Ed.* 3. 12. 47 *Ed.* 3. 5. 47 *Ed.* 3. 25. Ant. K.

(a) The *Distingas* may be in the Lands and Tenements, which he had the Day of the Writ purchased. 18 *Ed.* 3. 36. 38 *Ed.* 3. 1. and before the *Distingas* sued, the Conusee shall not be ousted. 21 H. 6. 56. See 48 *Ed.* 3. 1. 31 *Ed.* 3. *Audita Querela* 24. 20 *Ed.* 3. *ibid.* 28. 30.

(b) *A.* enteeff *B.* on Condition to re-enteeff *A.* and *C.* his Wile for their Lives remainder to *D.* the Daughter (Son) of *A.* and the Heirs of his Body, and the said *B.* by Collusion between him and *E.* makes a Recognizance of 200 *l.* to *E.* and one *F.* (after the Re-enteeffment as it seems,) *A.* dies, and *C.* takes *G.* to Husband, who on this Matter sues an *Audita Querela*; and it was Resolved, 1. That he need not count upon this Writ. 2. That though he may have Remedy by Writ of Disceit, or Conspiracy, yet

seeing here is Matter of Record, which is the Ground of the Writ, it is good. But 3. for that *E.* was Party to the Recognizance, and by the Writ is supposed Party to the Collusion, and this Suit is to defeat the Recognizance, and not to recover Damages; the Writ shall abate. 26 *Ed.* 3. 73. If Execution be sued against a Feoffee, on a Statute acknowledged before the Mayor of *C.* who had no Authority to take it, *Audita Querela* lies. See 29 *H.* 8. *Dyer* 35.

(c) And if the Party comes in, in Custody by a *Cepi corpus*, or a *Reddidit se*, at the Exigent, he shall have a *Scire facias* to acknowledge the Deed, but not if he offer to appear at the Exigent. *Dyer* 285. See a *Scire facias* to acknowledge a Deed, 33 *Ed.* 3. Execution 161. and *Audita Querela* 38.

Indentures, the Recognizor (or his Executors, if he be dead) may have an *Audita Querela* against the Recognizee.

And it appeareth in the Register, that a Writ of *Audita Querela* lieth for D an Infant who hath entered a Statute-merchant or a Statute-staple during his Nonage, if he be yet within Age.

Ant. N. And another *Audita Querela* appeareth in the Register for the Feoffee, of E Parcel of the Land which belonged to the Recognizor, against the Recognizee, because that the Recognizee hath purchased other Parcel of the Lands of the Recognizor, &c.

Sureties. If a Man be arrested and imprisoned upon a Statute-merchant, and after- F wards the Recognizee doth release unto the Recognizor, or he pay the Debt, and hath Acquittance, or pay Parcel, and hath a Release for the Residue; then they may come into the Chancery, and there find Surety, Body for Body, to be in the Chancery at a certain Day, and there to pay the Money, &c. if he cannot discharge himself by Acquittance or Release; and thereupon he shall have a Writ unto the Sheriff where he is in Ward, rehearsing how he hath found Sureties in the Chancery, commanding him to deliver him, if he kept him in Prison for that Cause, and for no other Cause, and upon that he may have an *Alias* and a *Pluries*, and Attachment against the Sheriff, if he will not deliver him, &c.

But if a Man be arrested and imprisoned upon a Statute-staple, and he hath Acquittance or Release to discharge himself, then if he will sue an *Audita Querela* or *Scire facias*, to avoid the Execution of that Statute, he ought for to give Surety as well to the Party, as unto the King in the Chancery, severally in a certain Sum, &c. to sue with Effect, and to render his Body, or pay the Money, &c. otherwise he shall not be delivered out of Prison: And the same is by Force of the Statute of 11 H. 6. cap. 10.

Writ of Attaint.

- G** **T**HE Writ of *Attaint* lieth where false Verdict is given (a) in a Court of Record against the Plaintiff or Defendant, or against the Demandant or Tenant in a Plea Real or Personal sued by Writ or by Bill; if the Debt or Damages do exceed forty Shillings; then he against whom the Verdict passed shall have a Writ of Attaint, and the Writ shall be such: If it be in Action of Trespafs in the King's Bench. V. 4 Ma. 1.
Br. Attaint
127. it lieth
not upon an
Information.
40 Ed. 3. 11.
- H** (b) If S. of L. shall make you secure, &c. then summon, &c. twenty-four lawful Knights of the Venue of N. that they be before us at B. on the Oath of Saint Hilary, ready by Oath to recognize whether the Jurors by whom a certain Inquisition was lately taken before us at B. by our Writ between I. and M. his Wife, and the aforesaid S. touching a certain (c) Trespafs to the said M. by the aforesaid S. committed, as it was said, have made a false Oath, as the same S. grievously complaining to us hath shewed, and in the mean time that you diligently inquire who were the Jurors (d) of the first Inquisition, &c. And have them then before our Justices aforesaid, &c. or before us, &c. as the Case is and lieth (e).
- I** And by the Statute of *West. 1. cap. 38.* a Man shall have an Attaint in Plea of Land of Freehold of a Thing which toucheth the Freehold; so it lies at Common Law. *3 H. 4. 15. per Hull.*
- K** And by the Statute of *1 Ed. 3. cap. 6.* a Man shall have Attaint in Trespafs. See for *Attaint in Trespafs or Debt*, Parl. 21 Ed. 3. n. 23.
- L** And by the Statute of *5 Ed. 3. cap. 6.* in the End of the Statute a (f) Man shall have Attaint of Trespafs sued by Bill without Writ before Justices of Record, if the Damages exceed forty Shillings. 14 H. 7. 14.
Brian.

(a) See on the Statute *23 H. 8. cap.*— that Attaint lies against the Executors or Heirs, &c. *Quære Dyer 201.*

(b) But if they are at Issue on the Point of an Attaint, it shall be tried by twelve (Jurymen.) *21 Ed. 3. 102. Contra* where the Defendant pleads a Release of the Plaintiff, it shall be tried by twenty-four, who are also afterwards to inquire of the false Oath, if they find for the Plaintiff. *20 H. 7. Kelw. 55. Note*; The Visne ought to be of the same Place where the Issue in the first Writ arose. *12 F. 2. Brief 641. Post. 242. b.*

(c) Although the original Writ or Suit comprised many Points, yet the Writ of Attaint shall mention only the Point on which the false Oath was given. *Dyer 141.*

(d) So that properly the Jurors are not Parties, and therefore where the Defendant admits the Writ to be good, or is estopped to say it is not good, the Petit twelve shall not plead in Abatement, though the Writ was purchased pending

another, Jointenancy or Coverture in the Plaintiff, *21 Ed. 3. 16.* or Outlawry in the Plaintiff. *2 H. 7. 7.* But a Plea which proves the Writ abated *in facto* they may have, as Death of the Plaintiff or Defendant. *18 H. 8. 5.* Also a Thing which excuses the false Oath they may plead as a Release of Actions personal. *21 Ed. 3. 16. per Thorp,* or a Release or Award between the Plaintiff and Defendant. *13 Ed. 3. 1. 5. 35 H. 6. 30. 18 H. 8. 1.* So a Release or Award between the Plaintiff and themselves. *13 Ed. 4. 1. per Sulliard. 12 H. 6. 6.* the Petty Jury cannot plead *Non-tenure*, because it concerns the Land; *contra* of Coverture.

(e) And the Party may have Attaint by another Writ. See *Ed. 2. Brief 827.*

(f) But if the Damages do not exceed 40 s. he shall not have Attaint on the Statute, although A. sued by Bill of Trespafs against B. who pleads Villainage against A. and found A. to be free. *Stat. 28 Ed. 3. cap. 8. Quære*, if he shall have a Writ of *Nief* against such Verdict.

14 H. 7. 14. And also a Man shall have Attaint for the Damages, although they be not M
Fineux. paid, &c. Stat. 2 Ed. 3. cap. 7.

34 H. 6. 13. And if false Verdict pass by Writ of *Nisi prius*, then the Form of the Writ N
is such :

Ready by Oath to recognize whether the Jurors, by whom a certain Inquisition lately was summoned before us, and taken before our beloved and faithful T. of B. one of our Justices assigned to hold Pleas before us, by our Writ of Nisi prius at K. between him the said E. and the aforesaid T. touching a certain Trespass, &c.

44 Ed. 3. 21. And if the Verdict be taken within any Liberty or Corporate Town, then C
the Writ of Attaint is such :

44 Aff. Br. Attaint 131. See 14 Ed. 3. 41. the Form. [106.]
Ready by Oath to recognize whether the Jurors, by whom a certain Inquisition was lately summoned and taken at L. without our Writ, before the Mayor and Bailiffs of our City of Lincoln, of a Plea which was before our beloved and faithful S. Scrope and his Companions, our Justices assigned to hold Pleas before us, between I. of L. and the aforesaid S. of a certain Trespass to him the said I. by the aforesaid S. committed, as it is said, (which said Plea, according to the Liberties granted by the Charters of our Progenitors, formerly Kings of England, and our Confirmation thereof to the City and Citizens of our City aforesaid, was returned to be pleaded before our same Mayor and Bailiffs) have made a false Oath, as he the said I. grievously complaining to us hath shewed, or not; and in the mean time, &c. (a).

And upon false Verdict given in London upon *Nisi prius*, the Form of the A
Writ is such (b) :

Ready by Oath to recognize whether the Jurors, by whom a certain Inquisition was lately summoned before us, and taken before R. of M. then one of our Justices assigned to hold Pleas before us, having associated to him A. of F. at Saint Martin's, London, according to the Liberties of the City aforesaid, by our Writ, &c.

If a false Verdict be given in a Corporate Town, upon a Plaint without B
Writ, then it is such :

Ready by Oath to recognize whether the Jurors, by whom a certain Inquisition was lately taken before us at Lincoln, without our Writ, between A. of D. of a certain Trespass, &c. committed, of which said Trespass the said B. was convicted, and twenty Pounds stand adjudged to the said A. for his Damages in this Behalf, as it is said, have made a false Oath, as the said B. &c.

(a) *Who shall have an Attaint.*

The Testator entered into Religion, and was deraigned; *Quere*, if Attaint lies against the Heir or Executor, or if the Executor brings Attaint, if the Testator shall be restored; as if the Son is barred in a *Mortdancestor*, the Daughter shall have an Attaint, and there the Judgment was against her Brother of the half Blood only. *Kelwey* 119. So a special Heir shall have Attaint. 22 H. 6. 28.

(b) See 7 H. 6. 32. on a false Oath given in London, the Sheriff returned, that by the Custom

of London, no Attaint shall be brought of a Verdict given by the Commons there, and therefore he could not execute the Writ, *Salvis Libertatibus Civitatis predictæ*, and out of the Chancery issued a Writ *de Libertatibus allocandis*, upon which issued a *Venire facias* to the Mayor and Sheriffs, to come and maintain their Liberties, and an *idem dies* given to the Parties, and they came, and their Liberties were allowed, and the Plaintiff took nothing by his Writ, but was awarded to Prison. 13 Ed. 4. 3. See the Stat. 11 H. 7. 21. Stat. 37 H. 8. cap. 5. *Dyer* 81.

C And if false Verdict be given within the Verge, then the Writ shall be such:
Ready by Oath to recognize whether the Jurors by whom a certain Inquisition lately was taken before the Steward and Marshal of our Household at C. without our Writ, between K. and the aforesaid T. of a certain Trespass to the same K. by the aforesaid T. at C. within our Verge (as it was said) was committed, have made a false Oath, &c.

D (a) And if a Man be condemned by false Verdict in Debt or Damages, then if he sue an Attaint, he shall have a special Writ unto the Justices, to bail him upon Sureties taken, that if the Attaint pass against him, he render himself to Prison, or satisfy the Debt; and the Writ is such (b):

The King to his beloved, &c. E. of S. and his Companions, greeting: Whereas Ant. 99. Post. 103.
J. hath arraigned before us, by our Writ, a certain Jury of twenty-four to convict the Jurors by whom a certain Inquisition was lately taken before us at W. by our Writ, between R. and the aforesaid J. of a certain Trespass, &c. committed, as it is said; and we have received Information on the Behalf of him the said J. that he, by Pretence of Proceſs made in the aforesaid Plea of Trespass, is taken and detained in the Prison of our Marshalsea before us, whereby he is less able to prosecute his Jury aforesaid, whereupon he hath besought us to administer to him a fit Remedy; We being unwilling that the said J. be so detained in our Prison, whereby he is not able to prosecute his Jury aforesaid as he ought, do command you, that if the said J. shall find before you sufficient Manucaptors, who may mainprize to have him before us to prosecute the Attaint aforesaid, and that Attaint being determined, if it shall pass against him, or he shall not prosecute that Attaint, that he render himself to our Prison aforesaid, and as well satisfy us of that which to us, as the aforesaid R. of that which to him belongeth in the Premises, and that he further do and receive what the Court shall consider in this Behalf, then that you cause him the said J. to be delivered out of our Prison aforesaid by such Mainprize, to prosecute the abovesaid Attaint, &c.

E (c) And if a Man vouch in a *Præcipe quod reddat*, one who entereth into the Warranty and pleadeth, and loseth by false Verdict, he shall have an Attaint, and the Writ shall make mention of the Voucher: And so if a Man pray to be received for Default of Tenant for Life, and is received and pleadeth, and loseth by false Verdict, he shall have a Writ of Attaint, and the Writ shall mention the Receipt.

F (d) And so if it pass against the Plaintiff by false Verdict, and he bring an Attaint, the Writ shall make mention of the Voucher, and of the Receipt; 8 H. 4. 4.
11 H. 4. 51.
Skeene.
34 H. 6. 31.
11 H. 4. 50.
Gascoigne.
17 Ed. 2.
Recovery in
Value 32.
9 H. 6. 38.
Yet he shall
not mention if the Tenant for Life be dead.

(a) And so it is in C. B. but some held that a Writ should be sent to the Warden of the *Fleet*, to have the Prisoner in Court *quolibet Die pendente placito*. *Dyer* 193. See and Note for the Form of this Writ, and that C. B. may send to the Marshal of B. R. for such a Prisoner, and in what Form it shall be, *Dyer* 364.

(b) If the Plaintiff loses against the Garnishee in Detinue, and thereon brings Maintenance against a Stranger, the Writ shall make Mention of the Garnishment. *21 H. 6. Erb. 90*. See Attaint

brought against the Vouchee by the Tenant; Exception, for that he did not mention the Voucher; *sed non allocatur*. *22 Ed. 3. 11*. See *9 H. 6. 39*.

(c) See *9 H. 6. 38. 11 H. 4. 5. 4 Aff. 71. 4 Ed. 3.*

(d) If a Parson prays in Aid of the Patron and Ordinary, and loses by Action tried, the Parson only shall have Attaint, and not the Patron. *19 H. 6. 75. 22 H. 6. 28*. See *9 H. 6. 39. 38*.

and so if he in the Reversion join with the Tenant for Life by Aid Prayer, and they lose, by which he in the Reversion brings an Action, he shall make mention in the Writ of the Aid Prayer; and also in Assise, if it be discontinued, and afterwards Re-attachment sued, and he loseth by false Verdict, the Writ of Attaint shall make mention of the Re-attachment, because he reviveth the Original of Assise.

But if the Defendant in a Writ of Detinue pray Garnishment, who cometh G and pleads, and the Plaintiff loseth, by which he bringeth Attaint against the Garnishee, the Writ of Attaint shall make mention of the Garnishment. That is well debated *M. 9 H. 6.* in the Title *Attaint* in the Abridgment.

But, saving the Opinion of the Book, it seemeth the Writ of Attaint shall make mention of the Garnishment, &c. for the Defendant in a Writ of Detinue who sueth the Garnishment, is in manner out of Court; and when the Garnishee comes, the Plaintiff counteth upon his original Writ, which is the Writ of Detinue, and the Garnishee shall answer to that Count; and the Writ of Garnishment is but for to make him come in and answer to the Plaintiff to his Original and Count, and when he comes and pleads, he pleads unto the Plaintiff's Count, which is upon the Original, by which the Plea which is between the Plaintiff and the Garnishee is upon the original Plea, as it seemeth; *tamen quere.*

(a) And if a Man plead a Deed in Bar, in which there are Witnessess, and H the Deed is denied, for which Process is awarded against the Witnessess which join with the Jury, and it is found the Plaintiff's Deed; now he shall not have an Attaint, &c. because the Witnessess do affirm the Verdict by their Testimonies. But if it be found not his Deed, then the other Party shall have an Attaint, for the Witnessess cannot prove a Negative, but of the Affirmative they may have Notice whether it be his Deed or not. A Man shall have an Attaint in special Cases, where every Word of the Verdict is true; as if a Man hath had Common appendant unto his Land, Time out of Mind, and he bring an Assise of the Common, and make Title that he hath had Common Time out of Mind, &c. without speaking of the Appendancy, and it is found for him; the Defendant shall have an Attaint, for the Plaintiff's Title is for Common in Gros, and not Common Appendant; and yet the Words of the Verdict are true, that he hath had Common Time out of Mind, &c. but not in such Manner as shall be taken by the Title.

And so if a Man have a Rent as Forester in Fee of such a Forest Time out A of Mind, and in Assise of that Rent he make Title thereunto, that he hath had a Rent out of that Land Time out of Mind, &c. without saying as Forester in Fee, &c. and it be found for him, the other Party shall have an Attaint upon that Verdict, although the Words of the Verdict be true, for he hath not had such Rent by Prescription as shall be intended and taken by his Title.

(a) See 22 *Aff.* 15. 11 *Ed.* 3.—11 *Aff.* 19. 40 *Aff.* 23, 25. 23 *Aff.* 11. 3 *Ed.* 3. *Attaint* 50.

- B** (a) If a Man recover outrageous Damages by Verdict, but he releaseth Parcel of the Damages before Judgment, and hath Judgment for the Residue, the Defendant shall not have an Attaint for those Damages which are released (b). 35 H. 6. 30. 11 Ed. 4. 5. 13 Ed. 4. 2. 14 H. 7. 5. 9 H. 6. 2.
- C** (c) And in a Writ of Waste the Plaintiff shall have a Writ to inquire of the Waste, who if they give false Verdict by which the Plaintiff recovereth, the Defendant shall have an Attaint, *per Cur' M. 2 H. 4.* But I do not see how the same can be warranted by any Statute, which giveth the Attaint, because the Writ of Inquiry is awarded by the Court *ex Officio per Sacramentum proborum, &c.* And the Sheriff may make the Inquiry by the Oaths of six or eight Persons of the Waste, and he is not bound to take twelve Persons. *Quere* of this. 3 H. 6. 29. 3 Martin ac. 48 Ed. 3. 19. cont. 33 H. 6. 25. 2 H. 4. 2. per Curiam, fo of Error. 18 H. 8. 1. 21 H. 6. 56. 28 H. 8. 5, 10. 38 Ed. 3. 12.
- and 27. Br. Collusion 18. upon Writ of Inquiry of Waste for an Abbot, Quale jus shall issue, which proves it is no Verdict, but an Inquiry.
- D** (d) The King shall have an Attaint upon a false Verdict passed against him as well as a common Person. 42 Ed. 3. 26.
- E** (e) In Trespas against two, one cometh and pleadeth Not guilty, and is found Guilty, and afterwards the other cometh and pleadeth Not guilty, and is found Guilty by another Inquest; now in this Case the first Jury shall assess all the Damages for the Trespas, and the Defendant in the last Inquest shall have an Attaint of the Damages assessed by the first Inquest, if they be outrageous or excessive, &c. 34 H. 6. 32. ac. 12 H. 4. 5. In Waste against two, one made Default, and the other pleaded; he who made Default shall not have Attaint. 43 Ed. 3. 36. 34 H. 6. 12. Morle cont. 39 H. 6. 1. ac. 8 H. 4. 23. Tirwin.
- F** (f) Tenant by Statute-merchant shall have an Attaint, if he be barred in Assise by false Verdict, or found against him by false Verdict, where he is Defendant in the Assise. 21 Aff. 16. Br. Attaint 64. 36 H. 6. 15. ac. in personal Actions.
- G** (g) If a Man recover in a *Præcipe quod reddat*, against a Tenant by false Verdict, there have been divers Opinions whether the Tenant shall have an 21 H. 6. 54.

(a) And therefore, though he cannot abridge the Damages given on such a Verdict. 9 H. 6. 2. yet he may have an Attaint for too small Damages. *Ibid.*

(b) And see accordant to this Case, a Release of Damages shall oust the Attaint, 14 H. 7. 5. 12 Ed. 4. 5. 13 Ed. 4. 2. 5.

(c) So agreed by *Martyn contr. Babington*, for by him it is more than an inquest of Office, for that the Judges are bound to render Judgment according to the finding of the Inquest, as in this Case of Waste; but on an Inquest to inquire of Damages, there it is only for Information, and the Court may increase or diminish the Damages. 3 H. 6. 29. See 2 H. 4. 31. 48 Ed. 3. 19. *contr.* 7 H. 4. 38.

(d) See 42 Ed. 3. 26. 4 *Mar. Bro. Informa-tion* 127. 11 Co. 5. 6.

(e) It seems, that in this Case, as to the Damages, they shall join in an Attaint, adjudged 25 H. 6. 23. but as touching Parcel, if they be found by one Verdict Guilty, they may join, as 18 Ed. 3. 25. 30 Ed. 3. 1. or they may sever. 35 H. 6. 21. *per Ash.* 46 Ed. 3. 81. *per Finch.* See 1 H. 5. 13. 44 Ed. 3. 7. 44 H. 6. 32.

(f) *A.* sued an Execution against *B.* on a Statute-Merchant, *B.* brings an *Audita Querela*, which on an Issue is found for *B.* *A.* brought an Attaint, and adjudged that it lies, and if the false Oath be found, Execution shall be awarded for him. 21 Ed. 3. 59. See 21 *Aff.* 16. 21 Ed. 3. 47. and 43 *Aff.* 41. how if he shall be acquitted on the Issue.

(g) See 41 Ed. 3. *Attaint* 27. 21 H. 6. 55. 113. 34 H. 6. 11. 12 H. 6. 6. *Ant.* 105. *Attaint* 70.

- Attaint before Execution sued out against him. *Vide* 41 *Ed.* 3. *Lib. Aff.* 21. *H.* 6. 60. But the Statute of 1 *Ed.* 3. saith, That a Man shall have an Attaint of Damages before Execution sued of them, before which Statute it seemeth he could not have Attaint of them. But in the Time of *Ed.* 1. the Defendant sued forth an Attaint for Damages upon false Verdict given against him in a Writ of Trespafs before the Plaintiff sued Execution of the Damages, which see in Title *Attaint* in the Abridgments, *Temp. Ed.* 1. And also by the same Reason, if a Man do recover Land, the Tenant shall not have Attaint before Execution. (a) And *Non-tenure* hath been pleaded, and admitted a good Plea divers Times in an Attaint. And on the other Side, if the Tenant shall not have an Attaint before Execution sued, or Entry made by the Demandant or his Heir, then perhaps they will not enter until the Jurors are dead, and then the Tenant shall be without Remedy by Attaint.
- (b) If a Man who was Tenant do recover in Attaint, the Judgment shall be, that he shall be arrested, &c. which could not be, if the Demandant hath not entered, and when he himself is Tenant in Possession.
- And I think it the better Opinion, that if in Trespafs the Defendant plead Villainage in the Plaintiff, &c. and he is found frank, unto his Damages of twenty Shillings, the Defendant shall not have an Attaint for the Smallness of the Damages, &c. But in a (c) *Præcipe quod reddat*, if the Tenant plead *Non-tenure*, and it be found against him, he shall have an Attaint, &c.
- (d) An Attaint shall be maintainable against the Terre-tenant without naming him who was Party to the Record: Otherwise it is in a Writ of *Recordare*; for that shall be sued against him who was Party, or his Heir or Executor, if it be a Personal Action, otherwise it shall abate.
- (a) See 31 *H.* 6. 12. 14 *Aff.* 2. 26 *H.* 8. 2. 8 *Ed.* 4. 19. 6 *Ed.* 3. *Waste* 25. *contr.* *Vide ant.* 97.
- (b) And also to the same Issues. 30 *Ed.* 3. *Judgment* 140. 40 *Aff.* 20.
- (c) He who pleads *Non-tenure*, shall have an Attaint. 40 *Aff.* 20. 23. *per Fitzb.* and therefore, where the Party himself pleaded *Non-tenure* of Parcel, the Plaintiff was driven to maintain his Writ. 21 *Ed.* 10. See in an Attaint brought against him who recovered *Non-tenure*, held no Plea, 8 *Ed.* 4. 19. *viz.* if he has once Execution, *per Prijot.* 35 *H.* 6. 44. See 10 *Aff.* 8. 31 *H.* 6. 12. 26 *H.* 8. 2.
- (d) Yet see in an Attaint by him who was Plaintiff against him, who was Tenant in the Original, *Non-tenure* held a good Plea, except the Plaintiff had freshly sued, 6 *Ed.* 3. 32. 21 *H.* 6. 55. *per Aſue*, &c. but it is there agreed, that *Non-tenure* is a good Plea against him who recovers. But it is certain, that Attaint may be

brought against the Tertenant alone, and if it pass against him, yet he shall not be taken; *contra* of him who was Party. 8 *H.* 4. 21, 22. See Jointenancy in Attaint against him who recovered Part; *contra* in Attaint against the Tenant, where the Party was barred. 26 *Aff.* 12. But if after the Writ of Attaint purchased, the Record be removed by Writ of Error, they shall yet proceed in *C. B.* *Dyer* 281, 284. See 6 *Aff.* 10. 40 *Aff.* 20. 4 *Ed.* 2. *Attaint* 67. *contra.*

The Record of an Assise of fresh Force was sent by Writ out of Chancery to *C. B.* and Attaint was brought on the Record there. 21 *Ed.* 3. 10. See *Dyer* 81. and there it seems, that if Issue be joined in *C. B.* on a Matter triable in the County *Palatine*, and it is there tried, and the Record removed, that Attaint lies here. 19 *H.* 6. 53. See *Dyer* 250. that Attaint lies in *C. B.* on a Record in *B. R.* sent by *Mittimus* into *C. B.* and so on a Verdict in *Scaccario*.

- L** Attaint doth not lie upon false Verdict given in an Appeal of Maihem, or Appeal of Felony or Murder. 34 H. 6. 36. 35 H. 6. 30. the cont. is admitted. 8 Eliz. Dyer 250.
- M** An Attaint may be sued in the Common Pleas, if the Record be there; or it may be sued in the King's Bench upon a false Verdict given in the Common Pleas, if the Record be removed into the King's Bench. 16 Aff. 4. Br. Attaint 60. 44 Ed. 3. 2. 44 Aff. 20. 21 Ed. 3. 10. Br. Att. 32. 21 Ed. 3. 3. Ibid. 51. H. 15 H. 3. 21 Eliz. Dyer 364.
- N** A Recovery was in an Affise brought in the King's Bench, and afterwards that Record was sent unto the Common Pleas, and the Party sued an Attaint upon the Record in the Common Pleas. *Vide* 8 Ed. 2. H. Affise, *Iter. Kan.*
- Attaint was sued upon a false Verdict given against the Defendant when he claimed Liberty, and adjudged that he should have it. H. 15 H. 3.
- O** (a) And the Writ of Attaint may be sued out of the Common Pleas or King's Bench, upon a false Verdict given in the same Court, as well as out of the Chancery. *Quod vide* 30 Ed. 1. *Itin. Cornub.*
- P** In a Writ of Entry brought in *Suffex*, the Defendant pleaded a Release in *London*, which was found against him in *London*, for which he brought an Attaint in *London*, and it was maintainable; *quod vide* M. 18 Ed. 1. F. *Brev.* 327.
- Q** (b) If the King recover by false Verdict, he shall have Attaint against the Petit Jury only, as if the King do recover by erroneous Process, &c. the Party shall have a Writ of Error of the Judgment, and shall not name the King, because he is always present in the Court. 20 H. 7. 6. [108.] Ant. 106. E.
- A** The Vouchee or Tenant by Resceit, or he in the Reversion, where he joineth to the Tenant by *Aid Prier*, shall have Attaint if he lose by false Verdict (c): And if Tenant for Life lose by false Judgment, he in the Reversion shall have an Attaint or Writ of Error, living the Tenant for Life, by the Statute of 9 R. 2. *cap.* 3. 2 H. 4. 4. 16 Ed. 3. Error 72. 20 Ed. 3. Error 2. 21 H. 6. 29.
- B** (d) If the Defendant in Trespass plead Villainage in the Plaintiff, and he saith that he is frank, and is so found by Verdict, and afterwards the Defendant dieth, his Heir shall have an Attaint to avoid this Estoppel and false Verdict, although it was given in a Personal Action.
- C** In an Attaint upon a Recovery in *Præcipe quod reddat*, the Defendant pleads *Non-tenure*, and the Demandant saith, that he made a Feoffment unto unknown Persons, &c. and that he brought the Action within the Year, and with that, that he will aver that the Defendants took the Profits the Day of

(a) See 21 Ed. 3. 3. If an Affise be taken before Justices assigned, and adjou ned for Difficulty into Bank, if an Attaint be sued, it is necessary to sue a Writ to the Justices, to remand the Record before the Justices assigned in *Pais*, and when they have the Record, there may issue an Attaint on the Rolls there.

(b) *Note*; In *Suis pro Domino Rege & seipso*, Attaint and Error granted in Parl. *Rot. Parl.* 21 Ed. 3. No 24. *Quare*.

(c) But the Writ ought to mention the Voucher and also expressly, that he entered into War-

ranty, and not only by a Supposal. 22 Ed. 3. 4. See Attaint by him in the Reversion, and by Resceit without Mention made of the Death or Life of the Lessee, and yet the Judgment is divers (different) 4 Ed. 3. 54. See *Dyer* 241. b. 44 Ed. 3. *Attaint* 22. *Ant.* 99. E.

(d) See accordant 13 Ed. 4. 2. See 8 H. 4. 16. the Heir shall have an Attaint on such a Trial in a *Homine Repl. giando*, but not in Trespass. 10 H. 6. 13. See 33 H. 6. 19. 45 Ed. 3. 1. 14 H. 7. 5. 13 Ed. 4. 2. 33 H. 6. 19.

the

the Writ purchased; and the Defendant saith, that he did not take the Profits, &c. (a) Now this Issue shall be tried by the Attaint; and if they give false Oaths, he shall have an Attaint upon that Verdict; by *Newton*: As if in a Writ of Right the Tenant plead a collateral Warranty made within the same County, it shall be tried by the Grand Assise; and if they give false Verdict, he shall have an Attaint, because the same is out of the Point of Assise; by *Newton, Tr. 21 H. 6.*

(b) Nonfuit in Attaint after Appearance is peremptory, and he shall not have a new Attaint; and so upon a *Retraxit*, if the Demandant say, he will no more sue his Attaint, and that he entered upon Record, he shall not after have another Attaint.

(c) If a Man have a *Præcipe quod reddat* against divers, by several *Præcipes*, and by Inquest it is found for the Demandant; he shall have a Writ of Attaint against the Tenant, &c. But if it is found against the Tenants, he shall have several Attaints; for as unto all of them, it is a several Inquest to try their Issues severally.

If the Demandant be barred in a *Formedon*, and afterwards releaseth all F Actions, or all his Right in the Land, yet his Heir shall have a Writ of Attaint.

And so if the Father be Nonfuit upon an Attaint upon a Writ of *Formedon*, he there shall have an Attaint.

And a Man shall have an Attaint before Justices of Oyer without original H Writ, upon a Bill only sued before the same Justices. *T. 5 Ed. 2. Attaint 68.*

(a) For the Issue arises on the Point of Attaint, and therefore shall be tried but by twelve. *21 Ed. 3. 10.* but if in Attaint in Assise, the grand Inquest inquire of Damages, no Attaint lies thereof. *8 H. 4. 22.* See *12 H. 6. 6, 66.* 2ⁿ Issue collateral, real, as Jointenancy, &c. shall be tried by the twenty-four; and by *Babb.* Attaint there lies, if they take a false Oath, by Assise. See *27 Aff. 61.* if in Attaint the Tenant pleads *Non tenure*, &c. he shall plead over that he made a true Oath, &c. See *22 H. 6. 55. F. Attaint 65.*

(b) And the Plaintiff shall be amerced, and taken. *6 Aff. 5.* See *Co. Lit. 139. a. 19 Aff. 13. 34 Aff. 6. and 9 infra E.*

(c) See the like Case *35 H. 6. 22, &c. per Prieor*, and *18 Ed. 3. 25.* If in an Assise against two, on *Nul Tort* pleaded, the one is acquitted of the Disseisin, but he is Tenant, and the other is found Disseisor, they shall have several Attaints; and so if one is found Disseisor of Part, and the other of the Residue, *per Cur. 30 Ed. 3. 1.* In Rescue against two, they plead Not guilty, and found against them, they shall join

in Attaint; but in an Assise against several Tenants on a false Oath as to Parcel, they shall sever in Attaint; *contr.* if it be only for Damages, *per Tushd. Quare*; and see they may join in Error. *3 H. 4. 16.* he who is acquitted of a Disseisin may join in Error with him who is found Disseisor, but not in Attaint. *2 Ed. 3. 3.*

A Writ of forcible Entry and Detainer against *A. B. and C.* and all found Guilty of the forcible Entry, but *C.* only of the forcible Detainer; they shall join, &c. *Dyer 141.* See *29 Aff. 9.* a Joinder in Attaint by him who disclaims, him who took on him the Tenancy of Parcel, and him who took the Residue jointly with a Stranger, and the Writ found true. See *19 R. 2. Brief 926.* Tenant by Statute or Lessee for Years, or a Guardian in an Assise against him, and he who has the Freehold, and one is acquitted of the Disseisin, but the other found Guilty, they shall join in Attaint as it seems, for he hath lost his Term, and he has no other Remedy, because he was Party to the Judgment. *43 Aff. 41.* See *14 Aff. 20. 35 H. 6. 22.*

I If false Verdict be given in Assise of *Novel Diss.* then if the Plaintiff will sue an Attaint, he ought to have such a Writ.

The King to the Sheriff of Lincolnshire, greeting: If A. shall make you secure, then summon, &c. twenty-four Knights of the Venue of S. that they be before our Justices at the first Assise when they shall come into these Parts; or thus, before our beloved and faithful R. of W. and B. of E. and those whom we have associated to him (touching certain Matters, &c. which the same R. and B. may make known to you) (a) ready by Oath to recognize whether J. unjustly and without Judgment disseised the aforesaid A. of his Freehold in S. or of his Common of Pasture in S. which belongs to his Freehold in the same Town, after the first Passage over of Lord H. Son of King J. into Gascony, whereof the said A. complains that the Jurors of the Assise of Novel Disseisin which between them was summoned and taken before us at W. by our Writ, or before the aforesaid R. and B. or before our beloved and faithful W. of H. and his Companions, our Justices last in Eyre at L. in your County by our Writ, have made a false Oath; and in the mean Time that you diligently inquire who were the Jurors of that Assise, and have them then before the Justices aforesaid at the Assise aforesaid, or before R. and B. and summon, &c. the aforesaid I. Or thus, The aforesaid I. H. who now holds the Tenements aforesaid, that he be then there to bear that Recognition: And (b) have there the Names of the Knights and this Writ.

K And if a Man lose by false Verdict in Assise before Justices of Assise, if he will sue an Attaint before the same Justices, he ought to sue a Patent directed unto the same Justices to give them Authority to hold Plea thereof; or he may sue a Patent unto other Justices to hold Plea of that Writ of Attaint; and the Form of the Patent is such:

(a) Yet see it adjudged, that on such Writ the Party may assign a false Oath on any special Plea in the same Assise. 11 H. 4. 5, 265. Note; If on a special Issue they find for the Plaintiff, and inquire over of the Seisin and Disseisin, and that is also found, he may assign a false Oath in the Disseisin found, but in no other Point; *per Thörn. Hill. and Hank.* For he ought to have a special Writ for that, or else a general Writ *quod Jurat in Assisa capt' falsum fecer' Sacramentum*; Or they may assign the false Oath, in what Point they will. 11 H. 4. 27. And note there in Assise against two, the one pleads to the Writ, and the other to the Assise; if he who pleads to the Assise brings Attaint, he cannot assign a false Oath in any Point put in Issue by his Companion. But they may have an Attaint in Common, and then each may assign in that which belongs to him; adjudged. And yet by a Plea to the Writ by one, if found for by him, the Writ abates as to both. 29 Ass. 9. adjudged accordant; so 11 H. 4. 65. and yet see by *Hull*, the Tenant may assign a false Oath in an Assise

between the Plaintiff and a Disseisor; but adjudged, that he cannot assign it on a Plea to a Writ of Assise brought by another Name. 11 H. 4. 52, 65.

(b) And Note; In this Writ the Jurors shall not have the View, for the Writ does not require it; see 3 H. 4. 15. in an Attaint by the Plaintiff in Assise; yet *contra* 8 Ed. 2. *Ass.* 396. In Attaint by the Defendant in Assise. Note; In this Attaint, if it be brought by him who was barred in the Assise, he shall recover the Land, and his Damages and Costs lost in the first Assise, and the Issues until the Judgment rendered: But if the Tenant in the Assise had pleaded in Bar, *que ne consist' ouster*, the Attaint shall only inquire of that Matter, in which the false Oath is assigned, and not of the Seisin and Disseisin; adjudged 8 H. 4. 22. Note; If the false Oath be found, the Justices may inquire of the Damages by another Enquest. *Ibid.* See the Judgment in *Dyer* 235. *Quod recuperaret Seisnam. Sed non per visum Jurator'.*

Writ of Attaint.

The King to his beloved and faithful R. and B. greeting: Know ye, that we L have constituted you, &c. our Justices, together with those whom we have associated unto you, to take a Jury of twenty-four Knights, which A. hath arraigned, before you by our Writ against I. to convict the Jurors in an Assise of Novel Disseisin, which was summoned between them and taken before you at W. by our Writ, of Tenements in S. or of common of Pasture in S. Or thus; before you the aforesaid R. and our beloved and faithful S. lately our Justices, &c. at W. by our Writ, of Tenements in S. and therefore we command you, that at a certain Day, &c. you shall appoint, you take that Jury to do thereupon that which to Justice belongs, according to the Law and Custom of our Realm, saving to us the Amercements from thence coming: We also command our Sheriff of Lincolnshire, that he cause that Jury to come before you at a certain Day and Place, whereof you shall give him Notice. In Witness whereof we have caused these our Letters to be made Patent. Witness, &c.

And a Man shall have a Writ of Attaint upon a false Verdict in an Assise of Nufance. Wherefore he levied or prostrated a certain Pool in N. &c. or a certain Ditch, or a certain Hedge; or diverted a Watercourse, to the Nufance of, &c. in the same Town, &c. and the Form of the Writ is such:

[109.]

If A. &c. then summon, &c. ready by Oath to recognize whether J. unjustly and without Judgment levied or prostrated a certain Pool in N. or a certain Ditch, or a certain Hedge, or diverted the Watercourse in N. or made narrow, or obstructed a certain Way in N. to the Nufance of, &c. in the same Town, after the first &c. whereof he the said A. complains that the Jurors of the Assise which was summoned between them and taken before, &c. at N. by our Writ, have made a false Oath; and in the mean Time, &c. and summon, &c. And have there, &c.

And it is a Rule in the Register, That in an Attaint upon an Assise of A Novel Disseisin a certain Day shall be set, as in Assise, On Monday or other Day, on the Morrow, or on the Octave, or in fifteen Days of Easter; but it becometh that the Tenant have Garnish out by fifteen Days in the Attaint, for the Statute doth not give lesser Time, but only in Assise before the King.

And there is another Form of the Writ, if the Assise be adjourned into the B Common Pleas, and taken there before the Justices of the Common Pleas, and the same appeareth in the Register.

(a) And another Form is of the Writ of Attaint, where the Assise is brought C against the Husband and Wife, and the Wife is received for the Default of the Husband, and pleadeth and loseth by false Verdict.

And

(a) See 11 H. 4. 51, and 65. per Brian; Husband and Wife brought a general Attaint on an Assise, where they had pleaded a Record, but failed at the Day. The Wife is received and adjudged (well). For in an Assise, the Husband, notwithstanding his Failure of Record and Default, &c. the Wife is Party to the Assise; for after such Resceit, the Seisin and Disseisin, it shall be inquired, and of Damages; but if it be

in a *Præcipe*, it ought to be a special Attaint, because there, by the Husband's Default she is out of Court; but here, if the one or the other be in Court, it is sufficient. Note; In Attaint against a Vouchee, Tenant by Resceit, either by him who joins in Aid, or by him who is received to sue sole; it was agreed that the Writ should not be general in *Loquela quæ fuit int' A. & B. per breve nostrum*: But it is necessary to

- D And another Form of Attaint is, where the Tenant in the Assise pleadeth the Release of the Plaintiff, or of his Ancestor in Bar of the Assise which is found against them, upon a false Verdict.
- E And another Form of the Writ of Attaint is, where the Verdict passeth by *Nisi prius* out of the Common Pleas.
- F And another Form of the Writ of Attaint is, where the Assise is summoned before certain Justices, and after it is taken before other Justices by a general Commission, and a false Verdict is given upon the same.
- G And another Form of the Writ is, If an Assise be summoned before divers Justices, and afterwards is taken by any of them by Virtue of the Writ of *Si non omnes*, then the Party shall have a Writ of Attaint, rehearsing the whole Matter.
- H And if a Man, upon Verdict given in an Assise before the Justices of Assise sueth an Attaint before the same Justices, or (a) other Justices, he may have a Writ of Association directed unto the same Justices before whom the Attaint is laid; and the Writ of *Si non omnes*, as he shall have in Assise, &c. who was Plaintiff there: And he shall have a Writ Patent directed unto him who is Associate, &c. which Writs do appear in the Register after the Writs of Assise of *Novel Disseisin*.

But it appeareth by one Writ in the Register, that there was a Constitution made, which required, that the Assise and Jurors and Certificate shall be taken before the Justices commonly assigned: By which it seemeth, that a Man shall not have an Attaint upon a false Verdict given in Assise, but before the Justices of Assise, or before the Justices of the Common Pleas, if the Record be removed thither, or before the Justices of the King's Bench, if the Record be removed before the King; and the Form of the Writ is such:

The King to his beloved and faithful F. and G. greeting: Although we lately appointed you our Justices to take a Jury of twenty and four Knights, which J. who was the Wife of E. arraigned before you by our Writ against E. who was the Wife of A. of L. to convict the Jurors in an Assise of Novel Disseisin, which between him the said A. and the aforesaid I. and others, &c. was summoned and taken at L. before our beloved and faithful R. and B. our Justices at the Assises, &c. assigned by our Writ, of Tenements in S. Because the Appointment aforesaid was made contrary to the Form of our Statute lately set forth at Northampton, in which is contained, that Assises, Attaints and Certifications be taken before the Justices commonly assigned, and not others: Which said Statute in all and singular its Articles we willing inviolably to be observed, command you, that you in no wise intermeddle touching the taking of the Jury aforesaid under Pretence of our Commission so made. Witness, &c. Which said Statute was made in the second Year of Ed. 3. King of England, chap. 2.

have a special Writ, making Mention of the Original, and of the Tenant, &c. *per Cur'*; and so by *Passon*, in an Attaint against the Garnishee; but by *Babb. and Strange*, a general Writ shall be good, without Mention of the Default; if the Case be so, that the Garnishee

makes Title to the Land, &c. for the whole Judgment shall be against the Garnishee, and he is not to have any Avail, but Prejudice by the Attaint. 9 H. 6. 38.

(a) See *per Hankf.* That Attaint belongs to B. R.

By which it appeareth, That he shall not have a Writ of Attaint by Commission, &c. before other Justices, but only before Justices of Assise, or of the Common Pleas, or King's Bench, as before is said.

(a) The Form of a Writ of Attaint upon a Redisseisin is such :

The King to the Sheriff, &c. If R. shall make you secure, &c. then summon, &c. twenty-four lawful Knights, &c. ready, &c. Whether the Jurors, by whom a certain Inquisition was taken before E. then Sheriff of your County, and Keeper of the Pleas of our Crown thereof, by our Writ, at W. between R. and the aforesaid B. of a certain Redisseisin done by the aforesaid B. to the same R. as it is said, of one Messuage and nine Acres of Land with the Appurtenances in W. have made a false Oath, as the same R. grievously complaining to us hath shewed; and in the mean Time do you diligently inquire who were the Jurors of that Inquisition, &c. and have them then before the aforesaid R. and I. and summon the aforesaid B. that he be then there to hear that Recognition, and have there the Summoners, &c.

Vi. 8 Eliz.
Dyer 25.

And it seemeth, That this Writ of Attaint ought to be sued before the Justices of Assise of the said County, and that they shall have a Patent for the same directed unto them, and that the Record shall be brought before them. But if the Record be removed into the Common Pleas, then it seemeth he shall have his Attaint there.

And it appeareth by *Glanville*, That a Man shall have an Attaint, and the Manner how the Jurors shall be punished.

42 Ed. 3. 25.
8 H. 4. 23.
Galscoigne.

And if any Jurors be convicted of false Oath, they shall be imprisoned, and then they ought to sue unto the King to pay a Fine for their Imprisonment, and when they are agreed with the King, they may sue a Writ for to remove the Record before the King in the King's Bench, and the Writ shall be such :

By this it appeareth that they shall not forfeit their Lands in Fee, as upon Præmunire, but for their own Lives, by Br. Att. 100 & 95. upon the Book of 22 Ed. 4. 1.

Record before the King in the King's Bench, and the Writ shall be such :

The King to his beloved E. and his Companions, &c. greeting : Whereas W. of M. and others, of a false Oath by them made in a certain Inquisition taken at W. before W. of B. and his Companions lately Justices of the Lord the King, &c. of the Bench, by our Writ between R. Demandant, and W. of M. Tenant of the Manor of B. with the Appurtenances (except one Garden in the same Manor) before our beloved and faithful W. of B. and his Companions, &c. of the Bench, by a certain Jury of twenty four have been convicted, and for that Reason adjudged to our Prison of the Fleet, and their Goods and Chattels, Lands and Tenements, seized into our Hand; We, for certain Reasons, have caused the Record and Process of the Business aforesaid, with all Things touching the same, together with the Bodies of the aforesaid W. and others, to come before us, and now on the Behalf of him the said W. we are besought, that whereas he hath already been a long Time and still is detained in such Prison, by reason of the Premises, that we would receive of him a reasonable Fine for the Imprisonment, for his Goods and Chattels, and Lands and Tenements aforesaid, and also for the Estrepeement of the

[110.]

(a) See 40 Aff. 23. 2 H. 4. 2. Attaint on a Redisseisin; and it seems if the false Oath be found, it shall not impeach the Record, nor shall he be restored to the Possession, but only be dis-

charged of the Damages and the Fine; yet perhaps if the Party has Title by subsequent Feoffment from him who recovered, he shall be restored to the Possession.

Land.

Lands and Tenements aforesaid, and cause him to be delivered from the Prison wherein he is so detained; we having Compassion of his State in this behalf, and being willing to do a special Favour to the same W. do command you, that having seen the Record and Process aforesaid, and having had Consideration of the Value of the Goods and Chattels, Lands and Tenements aforesaid, and the Estrepiement thereof, you receive a reasonable Fine of the same W. for that which belongs to us in this behalf, and deliver him the said W. from the Prison wherein he is detained by occasion of the Premisses, and so cause to be delivered to him his Goods and Chattels, Lands and Tenements being in our Hand, for the Fine aforesaid. Witness, &c.

And thereupon the Party shall be fined, as the Justices of the King's Bench will assess in their Discretion; and upon that they shall grant a Writ to deliver his Goods and his Lands, and for to deliver him out of Prison; and the Writ shall be such: 43 Ed. 3. 26.
See the Stat.
3 H. 8. c. 15.

The King to the Sheriff, &c. Whereas W. of M. one of the Jurors in a certain Inquisition taken at W. before W. of B. and his Companions, Justices of the Lord the King, &c. (as above until) our Justices of the Bench by our Writ of a false Oath by him the said W. made by a Jury of twenty-four Knights was convicted, and for that Reason adjudged to our Prison, his Goods and Chattels, and also his Lands and Tenements were seized into our Hand, as appears to us by the Inspection of the Record and Process aforesaid, which we have caused to come before us, and he the same W. afterward came in our Court before us, and made a Fine to us for the Imprisonment aforesaid, and to have his Lands and Tenements; we Command you, that without delay you cause the said W. to have again all the Lands and Tenements of him the said W. if they are in our Hand for that and no other Reason, and that you absolutely supersede the taking the Body of him the said W., for the Reason aforesaid. Provided nevertheless, that you answer to us for the Value of the Lands and Tenements aforesaid from the Time of the Judgment upon the Verdict of the Jury aforesaid given, until the Date of this Writ, and also for the Estrepiement of the same, when it shall be inquired thereof. Witness W. Thorpe, &c. in the sixth Year. Roll 104.

A And there are divers other Manner of Forms of Writs of Attaint, which are not here mentioned, because a Man may see them in the Register.

Writ of Oyer and Terminer.

B THE Writ of Oyer and Terminer should not be properly called a Writ; but it is a Commission directed unto certain Persons, when a great Assembly, Insurrection, or a (a) heinous Misdemeanor or Trespass is committed and done in any Place. Then the Manner and Usage is to make such a Commission of Oyer and Terminer, to hear and determine such Misbehaviour; and the Statute made 2 Ed. 3. c. 2. requireth, that no Commission of Oyer and Terminer be granted but before the Justices of one Bench or other, or the Justices Itinerants, and that for horrible Trespasles; and it is of the King's special Grace, according unto the Form of the Statute thereof made in the Time of the Grandfather of the said King Edward; and the Form of the Commission is such:

(a) And therefore a *Supersedeas* may be hereto, *quia non enormis transgressio.* 12 Aff. 21.

Writ of Oyer and Terminer.

The King to his beloved and faithful A. B. and C. greeting: *We have received C. information from the grievous Complaint of D. that E. F. and G. and certain other Malefactors and Disturbers (a) of our Peace, with Force and Arms made an Assault upon him the said D. at N. and him beat, &c. so that his Life was despaired of, and other Wrongs to him did, to the great Damage of him the said D. and against our Peace. And because we will not leave the Trespass unpunished, if it was committed in such Manner, we assign you and two of you our Justices to inquire by the Oath of honest and lawful Men of the County of Lincoln, by whom the Truth of the Matter may be better known, of the Names of the Malefactors aforesaid, who, together with the said E. F. and G. committed that Trespass, and the Truth of the Trespass aforesaid more fully, and to hear and determine the same Trespass according to the Law and Custom of our Realm; and therefore we command you that at certain Days and Places which you or two of you shall appoint for this Purpose, you make that Inquisition, and hear and determine that Trespass in Manner aforesaid done, as to Justice belongs, according to the Law and Custom of our Realm, saving to us the Amercements and other Things thereof belonging to us: For we have commanded our Sheriff of the County aforesaid that, at the Days and Places which you or two of you shall make known to him, he cause to come (b) before you or two of you, so many and such honest and lawful Men of his Bailiwick, by whom the Truth of the Matter in the Premises may be better known and inquired. In Witness whereof, &c.*

[III.]

And the Rule in the Register is, That if this Clause, *And certain other Malefactors, &c.* be not put into the Commission aforesaid, then in the End shall be this Clause, *By whom the Truth of the Matter may be better known, &c. and the Truth of the Trespass aforesaid more fully, and to hear and determine the same Trespass, &c.*

And the Form of the Writ which shall be directed unto the Sheriff upon A that Commission, is such:

The King to the Sheriff, &c. From the grievous Complaint of D. &c. (as above until) we have assigned our beloved, &c. A. B. and C. and two of them our Justices to inquire by the Oath of honest and lawful Men, &c. (until) to hear and determine according to the Law and Custom of our Realm: And therefore we command you, that at certain Days and Places which they the said A. B. and C. shall make known to you, you cause to come before them or two of them, so many and such honest and lawful Men of your Bailiwick by whom the Truth of the Matter in the Premises may be better known and inquired, and have there this Writ, &c.

And the King may make a Writ of Association unto the Justices of Oyer B and Terminer, to admit them into their Company whom the King hath associated unto them; and the Form is such:

The King to his beloved A. B. and C. Know ye, that whereas lately upon the Complaint of D. suggesting to us that E. F. and G. and certain other Malefactors and Disturbers of our Peace, &c. (until) unpunished, if it was committed in such Manner, we assign you and two of you our Justices, &c. (until) to hear and de-

(a) See an Oyer and Terminer for a Ward ravished, and Goods taken, and the Defendant found guilty, and thereupon a *Scire facias* issued. 29 Ed. 3. 37. See the like Writ, but *quare* of *quidam alii malefactores, &c.* because not indicted. 26 Aff. 7.

(b) And note; If they award a *Venire facias*, without shewing (before) that it is returned, it is well, 29 Ed. 3. 30. but a *Venire facias* ought to be awarded, 26 Aff. 7.

termine the same Trespass according to the Law and Custom, &c. We have assigned our trusty and well beloved H. to act in the Premises with you or two of you; yet so that if at certain Days and Places, which you or two of you shall appoint for this Purpose, be the said H. shall happen to be present, then that you admit him for a Companion for this Purpose in Form aforesaid: For we have commanded him the said H. that he attend to this Matter, together with you or two of you, as is aforesaid. Witnesses, &c.

And the Form of the Writ of Association, which shall be directed unto him who shall be associated unto the Commissioners, is such:

The King to his beloved and faithful H. greeting: Know you, that whereas lately upon the Complaint of D. suggesting to us that E. F. and G. and certain other Malefactors, &c. we have assigned our beloved, &c. A. B. and C. and two of them our Justices to inquire, &c. (as in the Patent until) and determine according to the Law, &c. we have associated you to the aforesaid A. B. and C. and two of them, to act in the Premises with them or two of them; yet so that if at certain Days and Places, which the same A. B. and C. or two of them shall appoint for this Purpose, you shall happen to be present, then that they admit you a Companion for this Purpose, otherwise A. B. and C. or two of them (your Presence not being expected) may proceed to act in the Premises: And therefore we command you, that you attend to act in Form aforesaid in the Premises, together with the aforesaid A. B. and C. or two of them, &c. saving to us, &c. For we have commanded the said A. B. and C. that they admit you a Companion for this Purpose, as before is said.

C And then the King may send another Writ unto the said Justices of Oyer and Terminer to proceed, although that all the Justices do not come at the Day of the Sessions. And this Writ is called a Writ of *Si non omnes*, &c. and shall be directed as well unto that Justice as shall be so associate, as unto the other Justices of Oyer and Terminer, and shall be such:

The King to his beloved A. B. and C. and H. greeting: Whereas lately upon the Complaint of D. suggesting to us that E. F. and G. and certain other Malefactors, &c. (until) against our Peace, we assigned you the aforesaid A. B. and C. and two of you our Justices, &c. (until) to hear and determine according to the Law and Custom of our Realm, and afterwards associated H. to act with you the aforesaid A. B. and C. and two of you, in the Premises: We command you, if you all cannot be conveniently present to act in the Premises, then that you, three, or two of you, who shall happen to be present, proceed to act in the Premises according to the Law, &c. Witnesses, &c.

D And if the King made Commissioners of Oyer and Terminer A. B. and C. and afterwards by another Writ doth associate unto them J. of H. who is admitted, &c. and afterwards J. of H. dieth; the King may make a new Association of other Persons to the first Justices; so that Association shall be made and granted after Association; and he may make Association of two or three Persons unto the first Commissioners, or to those of them who are living, to continue the Proceedings, and to proceed to hear and determine the whole Matter, and that they do admit those he doth associate, or two or any of them to proceed upon the whole Matter; and such Writ is in the Register; and by that it appeareth, that by the Death of any of the Commissioners, the Matter shall not be discontinued; and the Writ of Association shall be Patent, and the Writ directed to the Justices of Oyer and Terminer to admit the others in their Society shall be close.

And

Writ of Oyer and Terminer.

And if a Trespafs be done unto one in the Confines of two Counties, then E the Party may sue a Commission of Oyer and Terminer directed to certain Persons, to hear and determine the Matter; and the Form shall be such:

The King to his beloved, &c. We have received Information from the grievous Complaint of D. that G. with Force and Arms took and carried away the Goods and Chattels of him the said D. to the Value of one hundred Pounds, found at M. R. and N. which are in the Confines of the Counties of Norfolk and Suffolk, &c. (until) our Justices to inquire by the Oath of honest and lawful Men of the Counties aforesaid, by whom, &c. For we have commanded our Sheriffs of the Counties aforesaid, that at certain Days and Places in the Confines of the Counties aforesaid, which, &c. they cause to come before you in the Confines of the same Counties, so many and such honest and lawful Men, &c.

[112.]

And the Writs directed unto the Sheriffs of two Counties shall be Close. A

And a Commission of Oyer and Terminer was granted upon a Rescous made upon the King's Bailiff, where he distrained for Debts or Amercements to the King, and Rescous was made upon him.

And the King may grant certain Commissions *de Oyer & Terminer* of divers B Trespasses done by any Person at the Suggestion of divers Persons, without nominating any in the Commission, and then the Form of the Commission beginneth in this Manner:

The King to his beloved, &c. From the clamorous Complaints of divers Men of the County of N. often coming to our Hearing, that the Bishop of Winchester, &c. many and divers Oppressions, &c. And he shall have the like Writ unto the Sheriff to return the Panel.

And if a Man have Goods and Merchandise in any Ship upon the Seas, C which Ship is broken by Tempest, and the Goods cast upon the Lands, these are no Wrecks, because certain Persons came alive to the Land, and the Merchandises, or Goods, are taken by Malefactors unknown, &c. The Party may have a Commission of Oyer and Terminer, directed unto certain Persons, to inquire of those who did the Trespafs, and to hear and determine the same, and to make Restitution unto the Party, and a Writ unto the Sheriff to return *probos & legales homines, &c.* before the said Justices, &c.

And a Man may have Commission of Oyer and Terminer, to inquire of Ex- D tortions, Oppressions, and other Misdemeanors of Under-Sheriffs, Escheators, Bailiffs, Clerks of the Market, and all other Officers, upon the Complaint and Suit of any one that will sue, and a Writ unto the Sheriff to return a Jury before the said Justices.

And also the King may direct his Writ unto the Sheriff, or unto Mayors or E Bailiffs, to do as much as in them lieth and appertaineth to them, to remove such Persons from their Office, against whom it is supposed that any one will complain; or that he doth not put such or such into any Office, until Inquiry be made of their Carriage and Behaviour, &c.

And if a Man sueth a Commission of Oyer and Terminer against divers Persons F for taking of his Goods and Chattels, and when they have taken them, they waste, spend or eloin them; then the Party who sued out the Commission shall have a Writ unto the Sheriff, reciting the Matter, commanding him to stay the Goods, and to put them into safe Custody, until it be otherwise provided and adjudged by the Justices of Oyer and Terminer, or by other Justices to be after assigned. And upon that Commission of Oyer and Terminer, if it

be

be found for the Plaintiff, the Justices may return the Goods to the Party and give him Damages, and therefore it varieth from the Action of Trespafs sued before the Justices of the King's Bench, or the Common Pleas.

G And in the Time of the Vacation of a Bishoprick, if any Person hunt in the Parks and Chafes of the Bishop, the King may send his Commission of Oyer and Terminer to certain Persons, to hear and determine, and enquire thereof; and the Writ shall be such :

The King to his beloved, &c. Know ye, that we have assigned you and two of you our Justices to enquire, &c. of the County, &c. by whom, &c. what Malefactors and Disturbers of our Peace, with Force and Arms broke the Parks of S. H. and A. in the County aforesaid, after they came to our Hands, by reason of the present Vacation of the Bishoprick of Chichester, and in them, without our Licence and Will, chased and took and carried away the wild Beasts, and other Wrongs to us there did, to the Loss and Contempt of us, and against our Peace, and of the Truth of the Trespafs aforesaid more fully, and those Trespasfes to hear and determine according to the Law, &c. And therefore we command you, that at certain Days, &c. you make that Inquisition, and the Trespafs, &c. determine in Form aforesaid, &c. For we have commanded, &c. and inquired, &c. Witness, &c.

H And if in the Time of the Vacancy of the Archbishoprick, any Person doth hunt in the Parks, or cut down the Woods, or fish in the Piscaries of the Bishop, &c. when the Archbishop is created, the King may send and grant the Commission of Oyer and Terminer, to inquire and determine the Trespafs in the Time of the Vacancy ; and the Form of the Commission shall be,

The King to his beloved, &c. We have received Information from the grievous Complaint of the venerable Father W. Archbishop of York, that certain Malefactors, &c. the Parks, &c. (and recite in the Commission all the Trespafs especially) and other Wrongs, &c. in manifest Contempt of us, to the Prejudice of the Archbishoprick aforesaid, and the great Damage of the said Archbishop, and against our Peace ; and because the Contempt and Trespasfes, &c. unpunished, &c. we have assigned you, &c. to hear the Contempt and Trespafs, as well at the Suit of us, as of the aforesaid Archbishop, &c. to determine according to the Law, &c. And therefore we command you, &c.

But it is to see how it standeth with the Statute of *Marlbridge*, cap. 28. that the Bishop shall have an Action and punish a Trespafs done in the Vacancy of the Bishoprick : But it seemeth it shall be so by these Words in the Statute, *That if any Wrongs be done to Abbots or other Prelates of the Church, &c.* And in the End of the Statute are these Words, *If any intrude into the Lands and Tenements of such religious Persons in the Time of Vacation, of which Lands their Predecessors died seised as in right of their Church, &c.* And it seemeth these Words *hujusmodi religiosorum*, shall extend to Bishops : As much as to say, the Bishop shall punish a Trespafs done in Time of Vacation of the Bishoprick, in cutting down of Trees, &c. for of Right the King cannot cut such Trees ; but for hunting in the Parks, or fishing in the Piscaries, it seemeth the King ought to have the Action for the Trespafs done in the Time of the Vacancy ; but if they do destroy all the Fish within the Fish-pools, or kill up all the Deer in the Parks in the Time of the Vacancy, it seemeth reasonable, that by the Statute of *Marlebridge*, the Successor have an Action for such Trespafs : *Quære* of this Matter.

And it is intended, That the King of Right ought to keep and defend his A Kingdom as well against the Sea, as against Enemies, that it be not drowned or wasted, and to provide Remedy for the same: And also to provide that his Subjects pass by all Ways through the Kingdom with Safety; and therefore if the Sea Walls be broken, or the Sewers or Gutters not scoured, so as the fresh Waters cannot have their Courses, the King ought to grant a Commission to enquire thereof, and to hear and determine the Defaults; and the Form of the Commission is such:

The King to his beloved A. B. and C. &c. Whereas the Walls, Ditches, Gutters, Sewers, Bridges, Causeys, Gulfs, and Trenches in the Parts of Holland between the Crofs of W. and the Bridge of E. are in many Places in the Parts aforesaid, so thrown down and broken by the Violence of the Sea, and the Reflux and Inundation of fresh Waters, that very many and inestimable Damages for want of Reparation of the same Walls, Ditches, Gutters, Sewers, Bridges, Causeys, and Gulfs, and by Obstruction of the Trenches aforesaid, have happened there in Times past, and greater are feared to happen in Process of Time, unless a speedy Remedy be hereupon in due Time applied: We, for that because we are bound by reason of our Royal Dignity, to provide for the Safety of our Realm on every Side, willing to apply a fit and speedy Remedy in this Behalf, have assigned you to supervise the Walls, Ditches, Gutters, Sewers, Bridges, Causeys, Gulfs, and Trenches aforesaid, and to inquire as well by the Oath of Knights, as of other honest and lawful Men of the Parts aforesaid, as well within Liberties as without, by whom, &c. may be better known, by whose Default such Damages have there happened, and what Lands and Tenements they hold, or Common of Pasture, or Fisheries in those Parts, or also Defence, Benefit and Safety have, or after any Sort soever may have by the Walls, Ditches, Gutters, Sewers, Bridges, Causeys, Gulfs aforesaid, and also the Damages they sustain or may sustain by the Trenches aforesaid; and all those Persons, for the Quantity of their Lands and Tenements, or by the Number of Acres, or by Ploughlands according to the Proportions of their Tenures, or for the Quantity of their Common of Pasture or Fisheries there, to distrain, and by Amercements, and in other Manner as you shall see better to be done, to punish them, together with the Bailiffs of Liberties and others of those Parts, to repair such Walls, Ditches, Gutters, Sewers, Bridges, Causeys, and Gulfs in the Places necessary, and as often as, and when need shall be, to make of new, and the Trenches aforesaid, in Places necessary, to stop up, so that any Tenants of such Lands or Tenements, or having Common of Pasture, or Fishery, Rich or Poor, or of whatsoever high Condition, State, or Dignity they shall be, who may have any Sort of Defence whatsoever by the aforesaid Walls, Ditches, Gutters, Sewers, Bridges, Causeys and Gulfs, or also sustain or may sustain Damage by the said Trenches aforesaid, whether they be within Liberties or without, be not spared in this Behalf: And therefore we command you, that at certain Days and Places which you, &c. shall appoint for this Purpose, you supervise the aforesaid Walls, Ditches, Gutters, Sewers, Bridges, Causeys, Gulfs and Trenches, and do and fulfil all and singular the Premises in Form aforesaid, and that you cause firmly to be observed all Things which shall happen to be ordained and done by you in this Behalf, as well within Liberties as without. For we have commanded our Sheriff of Lincolnshire that he cause to come, &c. so many and such, as well Knights

as other honest, &c. as well within Liberties as without, by whom the Truth of the Matter may be better known, &c.

A And upon this Commission, a Writ shall issue to the Sheriff, rehearsing the whole Matter in the Commission, commanding him to return a Jury, &c. as appeareth by the Commission. And if the Justices shall sit by Virtue of that Commission, and take divers Presentments and Indictments, and award Procefs upon them returnable at a certain Day, and afterwards all the Justices or some of them die, the King may grant a new Commission to the Justices which are living only, or unto others, rehearsing the Death of him who is dead, or of those who are dead; commanding them to continue the Proceedings begun, and to proceed upon that Procefs, and to hear and determine all those Defaults and Offences in the said Commission, the King reciting, that he hath sent unto the Executors of those who died, to send all the Rolls, Records, and Procefs before the new Commissioners. And upon that Commission, the King shall send a Writ unto the Executors of the Justices who are dead, to send the Rolls, Records and Procefs as aforesaid, forthwith under their Seals; and another Writ unto the Sheriff to make a Panel, and to return the same before the new Commissioners, and upon that Commission the Justices shall make a Precept unto the Sheriff, that at a certain Day and Place he return before them the Panel according to their Commission, and that he be there before at the same Day with the Precept. And this new Commission shall be made as well to continue the Suits and Procefs betwixt Party and Party, sued before the Justices of *Oyer and Terminer*, as well as the Indictments and Presentments made and found for the King. And the King may put into the Commission a Command unto the said Commissioners, to receive the Records and the Rolls, and Procefs of the said Executors. But see the Statute of Sewers, and especially the Statute of King *Henry* the Eighth for that Matter.

Ant. 111. D.

[114.]

B (a) And if any *English* Merchant's Goods be spoiled, and his Good taken beyond the Seas by Merchants Strangers, and the *English* Merchant was beyond Sea to have Justice and Restitution made thereof, and could not obtain the same, and this Matter is testified unto the King in his Chancery: Now upon this Testimony, if the Merchants Strangers shall come into any Place within the Realm of *England* with their Goods; then the *English* Merchant shall have a Writ out of the Chancery, directed unto the Mayor or Bailiffs, where such Merchants Strangers are with their Goods, to arrest them and their Goods, and to keep them under Arrest, until they have satisfied the Party his Damages, which he hath sustained by Reason of their Misdoing. And may have divers Writs, directed unto divers Ports or Towns, unto the Mayor or Bailiffs thereof, to arrest such Merchants and their Goods; and to detain them, until they have satisfied the *English* Merchant for the Trespafs which they have done unto him beyond the Seas. But it seemeth the *English* Merchant shall not have such Writ, for any Debt due to him by Contract from a Merchant

(a) See a Commission for Piracy on the Stat. Commission at Common Law, *De captis a Francis post sufferentiam*. Rot. Pat. 26 Ed. 1. m. 24. or Lord Keeper, *Dyer* 212. and see the like Dorso.

Writ of Conspiracy.

Stranger, upon a Contract made beyond the Seas, if the Merchant do come into *England*, or his Goods; *Quære tamen* thereof. And the King shall recite in his Writ, which is directed unto the Mayor or Bailiffs, &c. how he hath sent the like Writ unto the Mayor or Bailiffs of such a Town, and another Writ unto the Mayor or Bailiffs of the other Town, in the like Manner; and this Writ shall be sued to attach all those who did the Trespafs, and their Goods unto the Value of the Trespafs, which he supposeth he was endamaged.

And if certain Persons ought to account unto a Corporation, as if the King grant, to the honest Men of the Town of *N.* a certain Sum, out of Things which come to the same Town to be sold, and there are Collectors to gather the same, who do so; the King may grant a Commission to certain Persons, to enquire what Persons have received such Sums, and to hear and determine the Matter, and to hear their Accounts thereupon, and do in that Case as Auditors shall do; and he shall send a Writ unto the Sheriff to return a Jury before the same Justices at the Day, &c. which they appoint, &c. to enquire thereof, and the Commission is in the End of the Writ *Ex parte talis*, and before the Writs of Debt, in the Register. C

18 Ed. 4. 1.
Conspiracy
against two,
one dieth pen-
dant the Writ; per
Curiam, the Writ
shall not abate;
and note by Finchden
43 Ed. 3. 32. that
one shall answer
if he appear.

Writ of Conspiracy.

Vide Statute
33 Ed. 1.
de Conspira-
tionibus.
Vide after E.
F. G. Conspi-
racy shall be
against one,
& econtr.
Note; if the
Action be brought
against divers,
and all but one
are acquitted,
the Action faileth.
28 Ass. 12. 60
if all but one
are discharged
by Matter in Law.

A Writ of (*a*) Conspiracy lieth where two, three, or more Persons of D Malice and Covin do conspire and devise to indict any (*b*) Person falsely, and afterwards he who is so indicted is acquitted; now he shall have this Writ of Conspiracy against them who so indicted him. But this Writ lieth against two Persons at the least who do so conspire; for if one Person of Malice and false Imagination do labour and cause another falsely to be indicted, the Party who is so indicted, shall not have a Writ of Conspiracy, &c. but an Action upon the Case against him who so caused him falsely to be indicted.

(*a*) One may be indicted of a Conspiracy at the Suit of the King, and then he shall have a villainous Judgment. 24 Ed. 3. 34, 73. 43 Ed. 3. 33. But at the Suit of the Party he shall be only taken. 27 Ass. 59. Judgment on Indictment of Conspiracy as in Attaint. 4 H. 5. Judgment 220. See the Form of the Judgment,

where the Party was convicted, &c. on Indictment. 46 Ass. 11.

(*b*) Note; If he be acquitted by Matter in Law, but not of the Fact, &c. as for that he did it *se defendendo*; or that he did it by Pretext of an Arrest for Felony, and he resisted, and thereupon he killed him; in this Case no Conspiracy lies, because no Malice. 22 Ass. 77.

E If two Men conspire to indict another, and afterwards he is indicted, for which he bringeth Appeal upon the same Indictment, and after is Nonfuit upon his Appeal after Declaration or before Declaration, the Party who was falsely indicted shall have a Writ of Conspiracy, because he is arraigned after the Declaration upon the Appeal, and is acquitted, and before the Declaration upon Nonfuit he shall be arraigned upon the Indictment, and if he be acquit, he shall have a Writ of Conspiracy, &c. But if he be falsely indicted, and after an Appeal is sued upon that Indictment, and he put no Answer unto the Appeal, and afterwards is acquitted by Verdict upon the Appeal, he shall not have a Writ of Conspiracy in that Case, because he is acquit upon the Appeal, and not upon the Indictment, &c. But upon Nonfuit in the Appeal a Conspiracy doth lie for the Cause before mentioned.

34 H. 6. 9.
per Prifot.
Note; this
Case proves
that Conspi-
racy lieth as
well upon
Appeal as In-
dictment for
he is arraigned

upon the Appeal, Stamford 172. that is, indicted at the Suit of the King. 19 Ed. Fitz. Conspir. 12. 5 Ed. 3-
ibid. 22.

F (a) And if two conspire to cause a Man to sue an Appeal against another of Felony or Murder, without any Indictment taken or found thereof, and after the Defendant is acquitted by Verdict, he shall not have a Writ of Conspiracy against those who conspire to appeal him, because that by the Statute of West. 2. c. 12. *Quia multi per malitiam*, it shall be enquired of Abettors, if he be not indicted thereof; and if they be found, he shall have a *Scire facias* against them, out of the same Court where he is acquitted, to answer him his Damages. And so if he get a (b) Nonfuit in any such Appeal, where there is not any Indictment, the Defendant shall have a Writ of Conspiracy after the Nonfuit or after the Acquittal: But the Form of the Writ of Conspiracy where he is acquit by Verdict, doth vary in Words in the End from the Writ of Conspiracy which is founded upon the Plaintiff's Nonfuit in Appeal; for one Writ founded upon the Verdict is, *Until according to the Law, &c. he was acquitted*; and the other Writ of Conspiracy founded upon the Plaintiff's Nonfuit is, *Until the same Complainant by Consideration of our Court departed quitted thereof*. The Form of which Writ follows:

5 Ed. 3. Con-
spiracy 22.
13 Ed. 3. Con-
spiracy 25.
the Abettors
shall not be
enquired of
but where the
Abetment is
found by En-
quest.
19 H. 6. 19.
and 4 H. 6. 23.
Nultiel record
is a good Re-
ply in Con-
spiracy.

[115.]

The King to the Sheriff, &c. If A. shall make you secure, &c. then put, &c. B. and C. that they be before us, &c. to shew (c) wherefore having before had Conspiracy between them at N. they falsely and maliciously procured the aforesaid A. to be indicted of privately stealing taking and leading away a certain Beast at N. and him to be taken upon that Occasion and to be detained in our Prison of Warwick, until in our Court before our beloved and faithful R. and S. our Jus- tices assigned to deliver our Gaol of Warwick, according to the Law and Custom

22 Aff. 77.

(a) Nor shall one have Conspiracy, if he be indicted or appealed, and arraigned and acquitted on the Appeal. 33 H. 6. 2. yet note; a Monk was appealed of Robbery and acquitted; he and his Abbot shall have a Writ of Conspiracy, though he was acquitted by Verdict, &c. 24 Ed. 3. 73. *Ratio*, for that the Abbot, tho'

not Party, shall have a *Scire facias*, for the Default of the Party on the Original.

(b) See 13 Ed. 3. *Conspiracy* 25. 17 Ed. 2. *ibid.* 26. *Ratio*, because the Writ is given on a Nonfuit in Appeal, and for that there is an Enquiry of the Abettors.

(c) *Conspiraverunt, & confederaverunt.* 19 R. 2. *Brief* 926.

of

of our Realm he was acquitted, to the great Damage of him the said A. and contrary to the Form of the Ordinance in such Case provided. And have there the Names of the Pledges and this Writ. Witness, &c.

The other Writ founded upon Nonsuit in Appeal is such :

The King to the Sheriff, &c. If A. shall make you secure, &c. then put, &c. B. and C. that they be before us, &c. to shew wherefore having before had Conspiracy between them at N. they falsely and maliciously procured the aforesaid A. to be appealed of the Death of D. lately slain at E. and him the said A. to be taken upon that Occasion and to be detained in our Prison of L. until in our Court before us the same A. &c. by the Consideration of our Court departed quitted thereof, &c.

And if a Man cause one as Principal to be appealed of Felony or Murder, A and another as Accessary to him, and afterwards is Nonsuit in his Appeal, the Accessary shall have a Writ of Conspiracy as well as the Principal.

33 H. 6. 1.
34 H. 6. 9.
cont. if the
Principal die
before he be
attainted.

And if the Principal, and one who is Accessary, be indicted of Felony, and be taken and arrested, and the Principal is indicted and acquitted, now by that the Accessary is discharged, and the Accessary thereupon shall have a Writ of Conspiracy against those who conspired to indict him, and the Writ in the End shall say, *Quousque idem* (the Principal) *secund' leg'*, &c. *acquietat' fuisse*, & *idem* (the Accessary) *quietus recessit*.

20 H. 6. 5.

(a) And a Man shall have a Writ of Conspiracy upon an Indictment before B any Mayor, Bailiff of any City or Borough, who have Gaol-delivery within the City or Borough, if he be acquitted before them, &c. for that Acquittal dischargeth him of the Felony. But a Writ of (b) Conspiracy doth not lie C against the Indictors, &c.

7 H. 4. 31.
8 H. 4. 6.
21 Ed. 3. 19.
47 Ed. 3. 17.
27 H. 8. 2.
20 H. 6. 5.
& 33.
35 H. 6. 14.
& 19.
14 H. 6.
Conspiracy 1.

If Jurors be sworn to enquire, &c. and afterwards any of them is dis- D charged by the Justices, he shall not be punished for what he did when he was sworn : But if he do conspire after, he may be charged for the same in a Writ of Conspiracy. (c)

And he who cometh into Court, and discovereth Felonies, and is sworn to give Evidence to the Jury, is not chargeable in Conspiracy. (d)

In a Conspiracy against two, one pleaded to the Writ, and the other (e) E Matter in Law, which is adjudged for him, and the Plea unto the Writ found by Verdict against him who pleaded unto the Writ ; the Plaintiff shall have Judgment against him who pleaded to the Writ : But if both had pleaded Not guilty, and (f) one had been found guilty, and the other not, there the Plaintiff shall not recover, for then he did not conspire as is sup-

(a) See 27 H. 8. 2. 12 Ed. 4. 17. 7 H. 4. 1. 21 Ed. 3. 47. 21 Ed. 4. 1. 8 H. 4.

(b) *Quere*, If the Jurors in such Case shall be punished, if they conspire before the Indictment. 47 Ed. 3. 16. 12 Ed. 4. 67. that they shall not, 27 Aff. 12.

Quere, If the Jurors procure themselves to be impanelled. 9 H. 4. fol. ult.

(c) See 20 H. 6. 33. *Stamf.* 73. 20 H. 6. 34. N. B. 57. *contra*.

(d) See 27 Aff. 12. 27 H. 8. 2. 37 Aff. 12. 35 H. 8. 15.

(e) See 14 H. 6. 15. accordant, for it may be a Conspiracy.

(f) See accordant 33 H. 6. 1. 8 Ed. 3. 17. 8 H. 6. 1. 28 Aff. 12. 11 H. 4. 2. but if one be found guilty, and the other makes Default, 24 Ed. 3. 73. or be dead, 18 Ed. 4. 1. there he shall have Judgment against the one, tho' he had released to the other. 22 R. 2. *Brief* 888.

F posed by the Writ. But it may be that they did conspire in the Case aforesaid, although that the Matter in Law be adjudged for the Defendant. And if the Principal die before any Verdict given upon the Acquittal, or have a Pardon and plead it, then the Accessary shall not have a Writ of Conspiracy, because he is discharged by the Death of the Principal, or by the Pardon to the Principal.

Conspiracy against two, one is attaint, the other makes Default, Judgment shall be

against him, 24 Ed. 3. 34. but quære by Stamford 174. for 27 Ed. 3. it is holden, that one shall not answer without the other.

G If a Man be falsly indicted of Felony, and afterwards by Act of Parliament a general Pardon is granted of all Felonies, the Party now (a) shall not have a Writ of Conspiracy, although he will plead unto the Indictment and is acquitted, and will not plead the Act, &c. because his Life was not in Danger, and the Felony was discharged by the Act.

H The Justices of Gaol-delivery arraign a Prisoner for Murder within the Year, where an Appeal is depending against the same Prisoner, for the same Murder, which they know, (b) and yet they proceed and acquit him, he shall have a Conspiracy, although he was not acquitted nor discharged of the Appeal: See the Statute of An. 3 H. 7. cap. 1. And before that Statute it was holden, 21 H. 6. by *Passon* and *Newton*, that he shall have a Conspiracy; for they said he should be hanged if he had been found guilty upon the Arraignment on the Indictment. And so the Statute *de Conspiratoribus, temp. Ed. 1.* which Statute doth not determine in what Cases a Conspiracy shall lie. But by the Statute of 4 Ed. 3. cap. 10. which giveth the Justices of *Nisi prius* and of Assise, Power to hear and determine of Conspiracies, Confederacies and Champerties, which they cannot determine in short Time, they adjourn them *in Banco*, and shall be there determined.

21 H. 6. 28, 29. 17 Ass. 1. Br. Appeal 55. Raftal Nisi prius 5. and note that before that Statute, they cannot arraign them at the King's Suit.

And if a Man be indicted or appealed of Treason or Felony, or a Trespass done in a foreign County, &c. if he be acquit thereof, he shall have a Conspiracy against him who procured him to be indicted or appealed, and shall recover treble Damages by the Writ upon the Statute of 8 H. 6. c. 80.

And if a Man be indicted of Felony or Treason, where there is not any such Place within the County, he shall have Conspiracy, and recover his Damages against the Abettors and Procurers or Conspirators, by the Statute of 18 H. 6. cap. 12.

And the Form of the Writ for the Accessary in a Writ of Conspiracy is,

Wherefore having before had Conspiracy, &c. they falsly and maliciously procured the aforesaid A. to be indicted for that because he had abetted and procured

(a) See accordingly by *Markham*, if the Indictment was abateable. 19 H. 6. 29. 9 Ed. 4. 12. 21 H. 6. 29.

(b) It seems sufficient if the Writ be delivered to the Sheriff, who opens it and reads it to the Justices; but if they have no Notice, it is clearly no Plea: And see there, if the Son of one out-

lawed, or his Wife brings an Appeal of the Death of his Father, and the Party is acquitted, he shall be after arraigned at the King's Suit; otherwise by *Newton*, if the younger Son brings an Appeal. But in both Cases he shall be again arraigned at the Party's Suit. 21 H. 6. 28, 29.

[116.] *D. who was the Wife of E. F. and G. to be appealed of the Death of E. her late Husband, before J. and his Companions lately our Justices to hear and determine that Appeal, and him to be taken and imprisoned upon that Occasion, and to be detained in our Prison of Lincoln, until he was acquitted thereof before our aforesaid Justices according to the Law and Custom of our Realm, &c.*

And there are divers other Writs of Conspiracy grounded upon Disceit, and A Trespafs done unto the Party, which are properly Actions of Trespafs upon the Case; as if two Men do conspire to indict another Man because he did not arrest a Felon, who passed by the Town of *N.* and because they caused him to be indicted and amerced in the Leet of *R.* and *F.* and took and imprisoned him for that Amercement until he be acquit in the said Leet.

4 Co. 18. And if Men say and affirm unto *A.* that he hath Right unto such Land, B and procure and cause him to sue an Action for the same against *B.* who is Tenant of that Land, &c. by which he is of Necessity compelled to sell other Lands or Tenements for the Defence of his Land, &c. now he shall have an Action (*a*) against those who procure or conspire to cause *A.* to bring his Action, &c.

And if two Men procure or cause one to be indicted for hunting in another's Park, for which he is taken, imprisoned, and put to Charges, until he hath acquitted him of the Trespafs, he shall have a Conspiracy against them (*b*).

46 Ed. 3. 20. And Conspiracy shall be maintainable against those who conspire to forge D
39 Ed. 2. 13. false Deeds which are given in Evidence, by which his Land is lost.

Fitz. Conspi- Conspiracy shall be maintainable against those who conspire to bring an Af- E
racy 9. fise in the Name of the Plaintiff against a Defendant, and to make one Attor-
42 Ed. 3. 14. ney for the Plaintiff, in which Affise the Plaintiff was found Villain, &c. now he may bring this Writ of Conspiracy.

3 Aff. 13. And Conspiracy shall be maintainable against those who conspire to indict F
11 H. 7. 25. one of Trespafs, &c. whereof he is acquitted, &c.

And Conspiracy shall be maintainable, because the Defendant made one to G
40 Ed. 3. 19. present in the Name of the Plaintiff unto an Advowson, and for that pre-
sentsing unto the Bishop, who is admitted and instituted, &c.

47 Ed. 3. 15. If one conspire to cause a false Office to be found of my Land, which is H
But the Office found by his Procurement, &c. I shall have a Writ of Conspiracy.

ought to be sufficient. In a Conspiracy against two, one justifies because he was then Justice by I
Commission, when the Plaintiff was indicted before him, &c. and for any
Conspiracy before, he pleaded Not guilty.

8 H. 4. 6. And a Writ of Conspiracy for indicting of Felony doth not lie but against K
11 H. 7. 26. two Persons at the least; but a Writ of Conspiracy for indicting one of
Trespafs or other Falsity made, as in the Cases aforesaid, lieth against one
Person only.

38 Ed. 3. 3. And a Man shall not have a Writ of Conspiracy for indicting him of Fe- I
lony, against Husband and Wife, because they are but one Person; but against
Husband and Wife and a third Person it well lieth. *Stamf.* 174.

(a) See *contra* 38 Ed. 3. 3. And that he ought to shew in his Writ who sued the Action.

(b) 7 H. 4. 31. 3 Aff. 6. 11 H. 7. 26.

But if the Writ of Conspiracy be brought against two, then it shall be said properly a Writ of Conspiracy. But if it be brought against one Person only, then it is but an Action upon the Case upon the Falstiy and Deceit done, because one Person cannot conspire with himself.

M And the Writ of Conspiracy may suppose the Conspiracy to be in two ^{9 H. 6. 30.} several Places, and shall be good; and the Writ ought to be brought in the ^{22 H. 6. 49.} County where the Conspiracy is made, and not where the Indictment was, or where the Deed was done, &c.

N There is also another Writ of Conspiracy which is given upon the Statute called *Articuli super Chartas*, 28 Ed. 1. cap. 10. which Writ shall be directed unto the Justices of Assise to enquire of the Conspiracy; and the Writ shall be such:

The King to his beloved and faithful W. of S. and his Companions, &c. assigned, greeting: Whereas among other Articles which Lord Edward formerly King of England our Grandfather granted for the Amendment of the Estate of his People, it is ordained, That of Conspirators, false Informers, and evil Procurers of Dozens Inquests, Assises, and Juries, the Justices of the one Bench, and the other, and Justices assigned to take Assises when they come into the Country to do their Office, shall upon every Plaint made unto them award Inquests thereupon without Writ, and shall do right unto the Plaintiff without Delay, as in the Articles aforesaid is more fully contained: We, willing that the said Articles in all Things to be inviolably observed, command you that having looked into the Ordinance aforesaid, you further willingly do, at the Prosecution of all and singular Persons complaining before you, that, which according to the Form of the Ordinance aforesaid shall be fit to be done. Witness, &c.

O And upon that he shall have an *Alias* and a *Pluries*, and Attachment against the Mayor or Sheriff, &c. if they do not according to the Writ sent unto them, or return the Cause why they cannot do the same; and it seemeth reasonable that the Party in Prison should have an Action upon that Statute against the Recognizor, if he find him not Bread and Water in Prison, &c. according to the Statute.

(a) *Writ of Account.*

9 H. 6. Ac-
count 8. **A** Writ of (b) Account lieth divers Ways; for if a Man make one his P
Bailiff of his Manor, &c. he shall have a Writ of Account against him
as Bailiff.

6 R. 2. Belk.
Account 47. And if a Man make one his Receiver, to receive his Rents or Debts, &c.
14 H. 4. 80. he shall have a Writ of Account against him as Receiver.

And if a Man make one his Bailiff, &c. and also his Receiver, then he
shall have an Account against him as Bailiff, and also as Receiver.

[117.] (c) A Man shall have a Writ of Account against one as Bailiff or Receiver, Q
29 H. 6. Fitz. where he was not his Bailiff or Receiver; for if a Man receive (d) Money for
Account 6. my Use, I shall have an Account against him as Receiver; or if a Man do
36 H. 6. 10. deliver Money unto another to deliver over unto me, I shall have an Account
10 R. 2. Ac- against him as my Receiver.
count 45. ac.

(e) And so if a Man enter into my Land to my Use, and receive the Pro- A
fits thereof, I shall have an Account against him as Bailiff.

Vi. 43 Ed. 2. And so if the Father doth occupy the Land of an Infant, which the In- B
21. Thorpe. fant hath purchased, or hath by Purchase, the Infant shall have an Account
against him as Bailiff of his Lands; and this Writ of Account may be sued as
well in the County as in the Common Pleas.

(a) *Note*; No Damages shall be in Account, because all shall be call, considered by the Auditors as Arrearages. 7 H. 6. 36. *per Martyn.* 2 R. 2. *Account* 45.

(b) *Note*; The Writ and Count *a tempore quo fuit Ballivus manerii de S. & habuit administrationem bonorum, &c.* if it be found *quod habuit administrationem bonorum*, altho' he be not *Ballivus manerii*, the Plaintiff shall recover, because there is no other Writ. *Kew.* 114. So *Ballivus Domus* shall be charged for Goods delivered to him as Bailiff in Account. 2 R. 2. *Account* 46. See an Account against a Bailiff of Woods, and of what Things he shall answer, 34 Ed. 3. *ibid.* 131. See 9 Ed. 4. 40. 9 Ed. 3. 37.

(c) If a Man holds certain Lands of me by the Service of being my Bailiff of my Manor, I shall have Account against him, tho' he never took the Profit, because he is my Bailiff by his Tenure; *per Fitzb.* 18 H. 8. 5.

If I deliver a Tun of Wine, or Last of Herrings, &c. to sell, and the Bailiff sell them; I shall not have Account against him for the Money as Receiver, for he had no Allowance of Costs for his Labour; but I may have Account against him as Bailiff. 43 Ed. 3. 21. 46 Ed. 3. 9. 4 H. 6. 27.

Note; A Bailiff shall have Allowance of ca-

sual Things of common Courfe, paid or done by him without any Command, as for Relief; but not for other casual Payments, if he has not a special Command, &c.

Note; A Bailiff shall not have Account against his Master for a Surplus on Account. 41 Ed. 3. *Account* 33. *Quere.*

Note; A Receiver of Monies is not compellable to make Adventure, for Doubt of Loss; and therefore if he makes Oath, that he did not find any Thing that he dared to buy for Doubt of Loss, the Plaintiff shall be thereby bound to receive his principal Sum; for if he had Loss, the Master is bound to sustain it. 46 Ed. 3. *Account* 40.

(d) Yet if one receive to my Use, Money sealed up in a Bag, as my Servant, Account does not lie against him. 29 Ed. 3. 20. 20 H. 6. 16. See 6 H. 4. 8. 2 H. 4. 12. 13 H. 4. 1. 41 Ed. 3. 10, 22. 33 H. 6. 2. 6 Ed. 3. 12. *F. Baily* 4.

(e) Account lies against him who receives my Rent without my Appointment, 11 H. 4. 65. *per Thirn.* but not against him who enters into the Lands of one of full Age, or an Infant not Tenant in Socage, 13 Ed. 3. 35. *Dyer* 277. but in the King's Cafe he shall be charged as Bailiff, if he has no Title. 33 H. 6. 3. *per Prioit.* 4 H. 7. 6.

C If a Man have Cause to have an Account against one as Bailiff or Receiver, if he die (a) his Executors shall have the Action: But an Account doth not lie against (b) the Executors of a Bailiff or Receiver, for the Receipt or Occupation of their Testator. And the Writ of Account which shall be sued in the County, is a *Justicies* directed unto the Sheriff, which is such (c):

19 Ed. 3. Fitz. Account 56. The Writ of Account is given to Executors by Statute, and was not at the Common Law.

The King to the Sheriff of Lincolnshire, greeting: We command you that you Justice A. that justly and without Delay he render to B. (d) his reasonable Account for the Time in which he was his Bailiff in N. and Receiver of the Money of him the said B. as he may reasonably shew that he ought to render to him, that we may bear no more Clamour thereupon for want of Justice. Witnesses, &c.

And for Executors the Writ is,

That he render to B. and C. Executors of the Testament of D. his reasonable Account for the Time in which he was the Bailiff of him the said D. in N. and Receiver of the Money of him the said Deceased, as he may reasonably shew, &c.

D If two Merchants occupy their Goods and Merchandizes in common unto their common Profit, one of them shall have an Action of Account against the other in the County, or in the Common Pleas; and the Writ in the County shall be,

The King to the Sheriff, &c. We command you that you Justice A. Merchant that justly, &c. he render to B. Merchant a reasonable Account (e) for the Time in which he was Receiver of the Money of him the said B. from whatever Cause and Contract coming to the common Profit of them the said A. and B. as by the Law of Merchants he may reasonably shew that he ought to render to him, &c.

Two purchase a Manor for Life, and one taketh upon him to be Bailiff to the other, no Account lieth by 8 Ed. 2. Account 115. & 21 Ed. 3. ibid. 66. 30 Ed. 1. Account 127.

And this Clause *Ex quacunq' causa & contractu*, ought to be put in every such Writ, whether it be sued in the Common Pleas or in the County.

E And the Executor of one Merchant shall have such Writ against the other Merchant, but not against his Executor:

The King to the Sheriff, &c. Command A. that he render to B. a reasonable Account for the Time in which he was Receiver of the Money of him the said A. or Bailiff of him the said A. and unless he will do it, and the aforesaid A. shall make you secure of prosecuting his Claim, then summon the aforesaid B. that he

Note, that in a Writ which

supposeth that *de tempore quo fuit receptor denariorum*, the Defendant shall not say, that he hath accounted from such Time to such Time, but ought to shew certain for what Things he hath accounted. Contra where the Writ is, *a tempore quo fuit Ball'*. 3 Ed. 3. Account 61.

(a) And so of a Successor, &c. 31 Ed. 3. Account 57, & 124. *contra* of an Heir. 19 Ed. 3. *ibid.* 56. See 10 H. 7. 10. Stat. W. 2. c. 23. and the Executor of an Executor, 25 Ed. 3. 5. and to an Administrator. 31 Ed. 3. 11. See *Co. Lit.* 89. b.

(b) But if the Bailiff's Executors do account with J. S. of their own Agreement, J. S. shall have Debt on the Arrears or Ballance of such Account. See Account against them as Executors, 2 H. 4. 13.

(c) Account against a Bailiff, shall be brought in the County where he was Bailiff, but against a Receiver it may be in any County. 30 Ed. 3. 20. See Account *de tempore quo fuit Receptor et Balliva* against a Feme, 19 H. 6. 5.

(d) Note; This Writ lies but in Account, and therefore it is a good Plea to say, fully accounted with the Plaintiff himself, or betwixt Auditors, &c. for after such Account made, the Action of Account is gone; but he may have Debt on the Arrears or Balance of the Account, 7 H. 4. 14. 34 H. 6. 43. but it ought to be before Auditors, assigned by him with whom the Account is. 29 Ed. 3. 40.

(e) See 30 Ed. 1. 127. *accordant.* 10 Ed. 3. 7. 14 Ed. 3. Account 60. 19 Ed. 2. *Brief* 839 or 829. *Mich.* 14 *Jac.* 1. *ket.* 189. *in B. R.* See alio 10 H. 7. 16. 14 Ed. 3. 11 H. 4. 79. *contr.* 19 Ed. 2. *Brief* 893. 19 Ed. 2.

be before our Justices at Westminster in fifteen Days of Easter, &c. to shew wherefore he will not do it: And have there the Summoners and this Writ, &c.

4 Ed. 3. pl. 8. And a Prior or Abbot or Master of an Hospital shall have a Writ of Account **F**
14 H. 4. Ac- against him who was Receiver or Bailiff in the Time of their Predecessor; and
count 124. the Form of the Writ shall be such:

4 Ed. 2. 17. *Command A. that he render to I. Priorefs of S. a reasonable Account for the*
ibid. 97. *Time, &c. Bailiff of Alice formerly Priorefs of S. Predecessor of the aforesaid I.*
31 Ed. 3. *and Receiver of the Money of her the said Alice Priorefs, &c.*
Account 57.

25 Ed. 3. 45. And another Writ thus: *Command A. that he render, &c.*

in the like

Action the Defendant said that he was not Receiver of the Predecessor, and admitted good. 20 Ed. 3. Account 78
Account lies against an Abbot notwithstanding the Receipt was by the Predecessor.

And another Writ thus: *Command A. that he render to the Commonalty of the Town of W. his reasonable Account for the Time, &c. in which he was Receiver of the Money of the said Commonalty in W. And unless, &c. And the said Commonalty shall make you secure, &c.*

And note, that the Writ of Account sued in the County, may at the Suit of **G**
the Plaintiff be removed into the Common Pleas by a *Pone*, without any Cause shewed in the Writ, but shall not be removed out of the County by the Defendant, without Cause shewed in the *Pone*, &c. As if the Defendant plead a foreign Release, then it shall be said in the *Pone*, *Because the aforesaid Defendant in pleading in our Court in N. in which the Plea dependeth by return of our Writ, hath produced a certain Writing of Acquittance under the Name of him the said A. containing in itself that he the aforesaid A. had released all Actions which he had against the aforesaid B. the Defendant by Reason of the Account aforesaid, to him the said B. in the County of Lincoln made as it is said, which said Writing the aforesaid A. hath absolutely denied; wherefore because that Plea ought not to be further carried on in the Court aforesaid, let Execution of this Writ be done, if the Cause be true, and otherwise not.*

Vi. 4 Ed. 2. There is another Manner of Writ of Account founded upon the Statute of **H**
Br. 791. *Marlbridge, cap. 23.* And that Writ lieth (a) where a Man ought to make
Where it is Account as Bailiff or Receiver, and hath no Lands nor Tenements by which
holden, if he he may be distrained, but is vagrant in secret Places, where he will not be
hath any Land, found, then the Plaintiff shall have a Writ of Account, which is called *Mon-*
it is sufficient; *stravit*, upon the Statute, and the Writ is of this Form:

but there he *The King to the Sheriff, &c. The Prior of N. hath shewed unto us, That*
had in the *whereas A. was his Bailiff in K. having the Care and Administration of all his*
Right of his *Affairs and Goods, the same A. his Account not being paid, seeking Subterfuges,*
Wife, but 6 s. *lies hid in your Bailiwick, nor can he be found and distrained to render to the said*
8 d. and had *Prior his Account aforesaid: And because by the Common Council of our Realm it is*
not Title to *provided, That if Bailiffs who are bound to render their Account to their Lords*
be Tenant by *do withdraw themselves, and have not Lands or Tenements whereby they may be*
the Curtesy, *distrained, they shall be attached by their Bodies, so that the Sheriff in whose*
therefore not *Bailiwick they be found, shall cause them to come to render their Account; We*
sufficient.

(a) And Note, that Lands of which he is seised had sufficient Lands, 4 Ed. 2. Brief 791. in the
ed in Right of his Wife, are not Lands within same County. 6 H. 6. Brief 806.

command

command you, that if the aforesaid Prior shall make you secure of prosecuting his Claim, then attach the aforesaid A. so that you may have him before our Justices, &c. such a Day, to render to the aforesaid Prior his Account aforesaid, as he may reasonably shew that he ought to render to him, &c. And have, &c.

But this Writ is not now in Use, because that by the Statute of *West. 2. cap. 12.* made after the Statute of *Marlbridge*, Process of Outlawry is given in a Writ of Account against Bailiffs and Receivers; but yet he may sue a *Monstravit* at this Day, if he will; and the Form of the Writ of *Monstravit* directed unto the Sheriffs of *London* is such:

[118.]

The King to the Sheriffs of London, greeting: A. hath shewed unto us, that whereas B. was Receiver of the Money of him the said A. and his Bailiff in N. the same B. his Account not being paid, seeking Subterfuges, lies hid in your Bailiwick, &c. We command you, that if the aforesaid A. shall make you secure of prosecuting his Claim, then attach the aforesaid B. so that you may have him before the Mayor of our City of London and yourselves, at your next Hustings in London, to render to the aforesaid A. his Account aforesaid, as, &c. And have, &c.

And the Receivers and Bailiffs may be put in one Writ in the *Monstravit*, thus: *Receiver of the Money of him the said A. and his Bailiff in N.* But if the Writ be sued in the Common Pleas, then the Bailiff must be put, *As his Bailiff and Receiver of the Money of him the said A. in N.*

A (a) And a Writ of Account lieth against Guardian in Socage; but the Form of the Writ doth vary from the Form of the Writ against the Bailiff, &c. and the Form is such:

See that in Account against one as Bailiff and Receiver, the Account 60.

Defendant said, that he was Guardian in Socage, and not Bailiff, and good; per 32 Ed. 3.

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, &c. B. that he be before our Justices, &c. to shew wherefore, whereas it is provided by the Common Council of our Realm, that Guardians of Lands and Tenements (b) which are held in Socage, shall give to the Heirs of those Lands and Tenements (c), when they shall come to full Age, their reasonable Account of the Issues forth coming of those Lands and Tenements, for the Time in which they had that Wardship by reason of the Minority of the Heirs aforesaid, he the said B. refuseth to render to the aforesaid A. his reasonable Account of the Issues forth coming of his Lands and Tenements in N. which are holden in Socage, and whereof the same B. had the Wardship while the aforesaid A. was under Age, as it is said. and therefore, &c.

13 Ed. 3. Account 77.

Notwithstanding that he be no Guardian in Droit, if the Defendant hath the

Occupation or Manurance of the Land, the Action lieth, per 32 Ed. 3. Account 59. Fitz. 27.

(a) No *Capias* or Exigent lies in Account against a Guardian, 17 Ed. 3. 50. but if the Defendant comes in by *Capias*, he shall be put to answer, for it is only a Miscontinuance. 29 Ed. 3. 5.

(b) And therefore it is a good Issue, *quod non tenentur in Socagio*, 13 Ed. 3. Account 77. 22

Ed. 4. 5. that they are held in Chivalry per *Defendentem & non in Socagio*. 11 H. 6. 7.

(c) And so note; The Occupation charges him, though he be not *Prochein amy*, 29 Ed. 3. 5. 4 Ed. 3. 107. accordant. But it seems *contra* if he held in Chivalry, although the Party has no Colour. 13 Ed. 3. *ibid.* 77. Co. Lit. 89.

(a) And

V. Old N. B.
9. and after
149. B. for
Admeasure-
ment of Dow-
er by Infant.
16 Ed. 2.
Account 30.
3 & 4 Mar.
Dyer 137.

6 Ed. 3. pl. 12.
a Case contra.

(a) And if a Man during the Minority of the Heir enter into the Land of the Heir which he hath by Descent, and take the Profits to the Use of the Heir, the Heir at full Age shall have an Account against him as Guardian for the Profits received until he come to the Age of fourteen Years; and for the Profits received after the Heir comes of the Age of fourteen Years, he shall have a Writ of Account against him as Bailiff, and not as Guardian; for he cannot be Guardian longer for Socage Lands but till fourteen Years of Age: But the Heir shall not have an Action of Account against him as Guardian, until the Heir be of the full Age of Twenty-one Years, and that by the Words of the Statute, which are *Qui cum ad etatem pervenerit, &c.* But he shall have an Action of Account against him as Bailiff during his Nonage, at what Time he will against him who taketh the Profits of the Land which he hath by Descent, be he Guardian in Socage in Right, &c.

And a Writ appeareth in the Register, that if a Man be found in Arrearages upon his Account, and the Party Plaintiff (b) do arrest him in London for those Arrearages, then he may sue a Writ in Chancery directed unto the Sheriff, rehearsing the whole Matter, commanding the Sheriff to detain and keep in Prison him who is so arrested, until he hath satisfied and paid the Arrearages. And it seemeth by the same Reason, that if a Man sue an Action of Debt upon Arrearages of Account before Auditors, and hath the Party arrested, that he shall have a Writ out of the Chancery unto the Sheriff, to keep him in Prison until he hath paid those Arrearages; but I conceive this Writ doth not stand in Law, that he shall be kept in Prison without answering unto the Suit commenced against him.

19 H. 6. 4.

(a) If one enters and claims the Land as Guardian in Chivalry, where the Land is held in Socage, he shall be only Bailiff to the Infant, 28 *Aff.* 13. 34 *Aff.* 10. and the Heir may have Account against him as Guardian in Socage. 10 *H. 6.* 7. *per Cott.* 41 *Ed.* 3. *Account* 35. 32 *Ed.* 3. *Account* 59. And note; the Account of Guardian in Socage is only for the Issues of the Land, for if he receive other Monies, he shall be charged as Receiver. 32 *Ed.* 3. *Account* 60.

Note; The Power of a Guardian in Socage is gone by the Taking of a Husband by the Infant, and yet they shall have Account against the Guardian, if he continues after. 10 *R.* 2. *Account* 132. See *Lit.* 27. *contra* 4 *Ed.* 3. *Account* 107. 12 *H.* 7. 26. 16 *Ed.* 2. *Account* 70. 29 *Ed.* 3. 5. *contra.* See also 33 *H.* 6. 2. 2 *H.* 4. 12. That it lies not against a Disseisor.

If a Feme Guardian in Socage takes Husband, Account lies against both; and note; the Age there was tried by Inspection; *Quare* 18 *Ed.* 3. 55. it lies till the full Age of the Heir, except the Custom enables the Infant at Fifteen, and therefore they were at Issue on the Age. 29 *Ed.*

3. 5. See 18 *Ed.* 2. *Account* 120. See a Feme Guardian in Socage took Husband, Account lies against the Baron Sole, for the Profit taken after the Coverture, but for those before, against both. 8 *Ed.* 2. *Brief* 847. See 2 *H.* 4. 12. *o. per Hankf.* a Man distrains, &c. in his own Name, and after makes Conuſance as Bailiff, he shall not have Aid of the Lord. 7 *H.* 4. 34. If one receives Rent from my Tenants without my Assent, Account lies, *E' n' unque* Receiver shall not aid him. 4 *H.* 7. *Brief* 65.

(b) Note; If the Defendant pleads in Bar, and it is found against him, he shall be awarded to the *Plēt, instantē*, 39 *Ed.* 3. 35. but if the Plaintiff there leaves him without accounting, he may have a *Scēe facias* against the Plaintiff; and if the Plaintiff does not come at the Day, the Defendant shall be dismissed, and thereby the Plaintiff has lost the Advantage of the Judgment; and *per Ansham*, of the Writ also. 18 *Ed.* 2. *Account* 123. See 1 *H.* 7. 1. But if he will not account, the Plaintiff may pray Judgment according to the Account. 14 *Ed.* 3. *Account* 109.

- D A Man may have a Writ of Account against a Woman as *Receptrix denariorum*, or against a Chaplain, but not against an Infant (a) 19 H. 6. 5. 3 Ed. 4. 40. 15 Ed. 4. 16. *contra*. 14 H. 6. 4. 16 Ed. 3. Account 52.
- E A Man may have an Account against one as Bailiff of a Court or Hundred (b). 13 H. 4. 8. 1 H. 5. 2. *contra*.
- F (c) And a Man shall have an Account against a Prior upon a Receipt had by his Commoign, but there the Writ doth suppose that he himself did receive the Money, &c. and shall not say, by the Hands of his Commoign. And so a Receipt made by the Husband, by the Hands of his Wife, is his own Receipt, and the Writ and the Count shall suppose that he himself did receive, &c. without saying by the Hands of the Wife; but it is otherwise if a Prior or Husband receive Money of a Stranger, then the Count shall be that he received by the Hands of a Stranger, &c. But the Writ shall be general, *Tempore quo fuit receptor denar'* without saying by whose Hands, but he shall shew that in the Count or Declaration. 2 H. 5. 2. 47 Ed. 3. 16. 4 Ed. 3. ac. 44 Ed. 1. but 5 Ed. 3. 21. Account 100. *contra*.
- G And if a Man deliver Goods or Money beyond Sea to deliver to him again in *England* at a certain Place, he shall have an Account for those Goods, &c. 41 Ed. 3. 9, 12.
- And if a Man deliver Money to one upon Condition, that if he do such a Thing, he shall have the Money, if not, then he who delivered it shall have it again; if he perform not the Condition, he shall have an Account against him for the same. 41 Ed. 3. 10. 12 H. 4. 18. ac. 11 H. 4. 75. Skreen. 21 Ed. 3. Account 66.
- H (d) If two have Goods in Jointure, or in Common, and one of them deliver the Goods to one to render Account, he alone shall have an Action for them (e).
- I If two have a Ward, and one take all the Profits, the other shall have an Account against him (f). P. 45 Ed. 3. 43 Ed. 2. 21. 45 Ed. 3. 20.

(a) In Account, it is a good Plea to say he was under Age at the Time of the Resceit. 21 Ed. 3. 7. See the Form of the Writ against Baron and Feme, on a Resceit by the Feme. *Dyer* 202.

(b) Or of a Nief. 2 H. 5. 2. 47 Ed. 3. 16.

(c) The Count shall not abate, but when it supposes a Resceit by the Hands of the Commonk, or Feme of the Plaintiff, or Defendant; but it shall not oust the Defendant of his Law. But it seems the Count is good, supposing the Resceit immediate in such Case. 13 H. 4. 8. 2 H. 5. 2. 10 Ed. 4. 6. 15 Ed. 4. 16. See 4 Ed. 3. pl. 45. 5 Ed. 3. pl. 6. *contra*.

(d) See *contra* 13 Ed. 2. Account 158. 15 Ed. 2. Account 119. 31 Ed. 1. Account 126. where one Jointenant alone was Bailiff.

(e) 12 H. 4. 18. *per Trem.*

(f) *Viz.* Where he was his Bailiff. 21 Ed. 3.

60. Account 66. 14 Ed. 3. Account 70. 30 Ed. 1. Account 127. 31 Ed. 1. Account 126. And see there a Summons and Severance in Account. See 17 Ed. 2. Account 122. 47 Ed. 3. 22. 49 Ed. 3. 28.

Note; In Account by C. against B. as Receiver by the Hands of D. the Defendant pleads that A. made the Plaintiff and Defendant his Executors, and that D. was indebted to A. in such a Sum, and that the Defendant received it. *Resolved*, 1. That Account does not lie by one Executor against the other, for the Possession of the one is the Possession of the other. 2. That it is no Plea here, if he does not say that he received the Money to render an Account, &c. for one Piece of Money cannot be known from another; but it is otherwise in Trespafs or Detinue of Chattels which may be known. 11 H. 4. 79. 13 H. 4. 1.

(a) If

[119.] (a) If the Husband hath received the Profits of the Wife's Lands, and die, A
10 H. 6. 11. the Wife shall not have a Writ of Account of the Profits nor of the Rents,
during the Coverture, against the Husband's Executors.

4 Ed. 3. 17. (b) If a Receiver or Bailiff make a Deputy, yet the Action of Account B
Fitz. Account shall be brought against the Receiver or Bailiff themselves, and not against
97. their Deputies; for the Deputies receive the same to their Masters Uses.

11 R. 2. He who is Surveyor or Controller of Lands, shall not be charged in C
Account 48. Account (c).

4 Ed. 3. 12 Ed. 3. *ibid.* 75. & 13 Ed. 3. *ibid.* 76.
Account 34.

6 Ed. 3. 3. An Apprentice shall not be charged to Account by a Writ of Account; D
Account 102. but the Master shall have a Writ of Account against a Servant who is sent to
8 Ed. 3. receive Money, &c. if he be Receiver (d).
Account 94.

V. Account as Receiver, the Defendant said that he was his Apprentice, and no Plea, but he was forced to the
Receipt.

(e) The Parish Priest shall not be charged for the Offerings offered by a E
Writ of Account, if it be not otherwise agreed betwixt them, &c. for the
Clerk holds the Vessel in which they are put. 6 Ed. 6. *pl.* 7.

If the King grant unto a Town the Toll of the Things sold in the same F
Town, for the Walling of the Town, and other necessary Things in the Town,
and there be Collectors to receive the same, if the Collectors will not render
Account thereof, they may have a Commission out of the Chancery to inquire
of the Receipt of the Toll-Money, and the Receivers, and to hear and deter-
mine the same, and to hear their Accounts, and a Writ of Attendance unto
the Sheriff, to return a Jury before the Commissioners.

Writ of Debt.

C. 5. pa. 79. A Writ of Debt properly lieth where a Man oweth another a certain Sum G
10 H. 6. 7. of Money by Obligation, or by Bargain for a Thing sold, or by Con-
Debt per tract, or upon a Loan made by the Creditor to the Debtor, and the Debtor
Amercement will not pay the Debt at the Day appointed that he ought to pay it, then
in Leet. Debt against Successor upon Account to his Predecessor, which comes to the Use of the House,
22 H. 6. 56. the Writ shall be in the Debt.
13 H. 7. 3. in

(a) See 11 R. 2. *Account* 49. For Rent issuing out of a Freehold, by one during the Coverture, the Feme shall have Account, and not the Husband's Executors; *contra* of other Receipts.

(b) And the immediate Bailiff shall have Account against his Deputy. *Note*; He surmised that he had accounted. See 4 Ed. 3. 17. & 8. 11 R. 2. *Account* —.

(c) See 41 Ed. 3. *Account* 34. 11 Ed. 3. *ib.* 75. 13. Ed. 3. *ibid.* 76. 12 Ed. 3. 13 Ed. 3.

(d) If they are not in a Bag sealed. 29 Ed. 3. 20. 8 Ed. 3. 261.

(e) 25 Ed. 3. 46. But if he was his Procurator of the Church, to receive to his Use the Offerings, &c. Account lies from the Time that he was *Ballivus Ecccl.* 30 Ed. 3. 1. 25 Ed. 3. 46.

(a) the Creditor shall have an Action of Debt against him for the same; and it may be sued in the County before the Sheriff by *Justicies*, as well as in the Common Pleas; and the Form of the Writ is sometimes in the *Debet* and *Detinet*, and sometimes in the *Detinet* only, and not in the *Debet*, and if it be (b) in the *Debet* it shall abate. It shall be always in the *Debet* and *Detinet*, when he who makes the Bargain or Contract, or lends the Money, or he to whom the Bond is made, bringeth the Action against him who is bounden, or Party to the Contract (c) or Bargain, or unto the Lending of the Money; and Money delivered by the Writ. But if a Man sell twenty Quarters of Wheat, or a Horse; if he bring Debt for the Horse, the Writ shall be in the *Detinet* only, and the Form of the Writ sued in the County before the Sheriff for Money, is such:

In Debt against Husband and Wife for a Debt before Coverture the Writ shall be *Debet* and *Detinet*. 47 Ed. 3. 23.

Detinet; so in Debt against or for the Successors in Respect of Obligation made to the Predecessor. 40 Ed. 3. 16. 9 Ed. 4. 41. 47 Ed. 3. 23. If the Heir be to bring Debt, it shall be in the

(d) *The King to the Sheriff of Surry, greeting: We command you, that you Justice A. that justly and without Delay he render to B. twenty Skillings which he oweth to him as it is said, as he can reasonably shew that he ought to render it to him, that we may hear no more Clamour for want of Justice, &c. Witness, &c.*

I And if the Writ of Debt be for other Goods or Chattels than Money, then the Writ of Debt shall be such: Art. 70.

The King to the Sheriff, &c. We command you, that you Justice A. &c. that he render to B. a certain Book, or a certain Cup, or a certain Horse, or two Lambs of the Price of, &c. which he unjustly detains from him, &c.

K And if a Writ of Debt be brought in the County before the Sheriff by *Justicies*, the Plaintiff may remove the Plea unto the Common Pleas by a *Pone*, without shewing Cause in the Writ: But the Defendant shall not remove the

(a) See Debt and Detinue of Things brought against Executors, by several *Præcipes* in one Writ. 11 H. 6. 48. 12 H. 6. 1.

(b) Note; If Lessee for Years rendring Rent makes his Executors and dies, Debt lies against them in the *Detinet*, 10 H. 7. 5. or it may be in the *Debet* and *Detinet*, 11 H. 6. 16. but by *Hargraves's Case*, it shall be in the *Debet* only. 5 Co. It is good either way for the Occupation, 14 H. 4. 29. but if Lessee for Years of a Rent dies, for Rent incurred after his Death; it lies in the *Detinet*. 11 H. 6. 36.

See 14 H. 4. 28. It is said by *Fort.* that an Executor may waive a Lease for Years made to the Testator, rendring Rent. See 11 H. 6. 36. It is said, if a Termor makes his Executors, and dies, and one of the Executors occupies the Term, that Debt lies against him alone in the *Debet* and *Detinet*. *Vide Post.* M.

See 19 H. 8. 8. 10 H. 7. 5. 22 Ed. 4. 21. 41 Ed. 3. *Brief* 54. 47 Ed. 3. 27.

That a Writ of Debt lies for a Fine to the King, *vide ant.* 95.

Though *W. 2. cap. 11.* gives an Action against the Gaoler that lets out of Prison one committed to him for Arrearages of Account, yet if one be committed to him upon Condemnation in Debt, and he lets him go at large, he shall have an Action of Debt against him, though the Statute be penal. *Plowd.* 178. a.

(c) See 50 Ed. 3. 16. 11 H. 7. 6. *Vide infra* M. 19 H. 8. 10 H. 7. 8. 22 Ed. 4. 21.

(d) Note; On a *Justicies*, the Sheriff cannot award a *Capias* or a *Ca. Sa.* as it seems, nor if the Suit be removed by *Pone* into C. B. and the Sheriff return *Nil habet*, the Court cannot grant a *Capias*; but it is otherwise on a *Replevin* removed, *ut supra.* 3 H. 6. 54. *Stat.* 25 Ed. 2. *cap.* 17.

Plea out of the County without shewing Cause in the *Pone*, and yet in the End of the Writ it shall be said, *Let Execution of this Writ be done, if the Cause be true, otherwise not.* And the Causes wherefore the Defendant may remove the Plea, are many, as appeareth in the Register. One, if the Defendant plead a foreign Plea, which cannot be tried in the County, &c. Or if the Defendant shew that he, before whom the Plea is depending, doth maintain the Plaintiff, or favour him, &c.

And if the Plea of Debt be sued within any Liberty, or Court of any Borough or City, &c. the Plaintiff may remove the Plea by a *Recordare* into the Common Pleas without shewing any Cause in the Writ. But if the Defendant sue to remove the Plea by a *Recordare* into the Common Pleas, out of any Town or City, he ought to shew Cause in the Writ, as before is said. And if the Sheriff remove the Plea out of the Court by a *Pone* at the Suit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgment, and award Execution, &c. then the Defendant, or he against whom the Judgment is given and Execution awarded, shall have an Attachment against the Bailiffs, or those who so proceeded to Judgment, &c. to answer as well the King for the Contempt, as the Party his Damages, &c. And the Form of the Writ of Debt in the Common Pleas is,

The King to the Sheriff, &c. Command A. that justly, &c. he render to B. one L hundred Shillings, which he owes to him, and unjustly detains, as it is said; and unless he will do it, and the aforesaid B. shall make you secure, &c. then summon by good Summoners the aforesaid A. &c.

29 H. 8. 8.
Vide supra,
H. &c. ib.

(a) And the Rule in the Register is, *That in a Writ of Debt of Chattels, it is never said, "That he oweth to him."* And if the Debt be brought by Executors for a Duty due to their Testator, the Writ shall be, *Which he detains from them,* and not *Owes to and detains,* because they were not Parties to the Contract. And so if Debt be brought by the Creditor against Executors for the Debt of the Testator, the Writ shall be, *Which they detain from him,* and not *Owe and detain,* although by the Writ he demand Money, viz. twenty Pounds, or other Sum of Money.

[120.] If a Man make B. and a Monk his Executors, and is indebted unto another, the Action of Debt shall be brought against B. and the Abbot and the Monk; and the Form of the Writ shall be such:

(a) Note; The Judgment is for the Chattels or the Value, and so Conditional. See 50 Ed. 3. 16. 9 Ed. 4. 49. *Rast. Entr.* 174. *Co. Lit.* 90.

If Judgment be given either for or against Executors in Debt for a Duty due by the Testator, the Writ brought on such Judgment shall be only *Detinet.* 11 H. 6. 56. adjudged. 10 H. 7. 5. 11 H. 6. 36. So if the Executors assign Auditors to the Testator's Accountant, Debt on the Account shall be in the *Detinet* only. 10 H. 7. 61. 11 H. 6. 17. 20 H. 6. 4. See 2 H. 4. 13. Note the Reason of those Cases, where the Foundation of the Action appears of Necessity to commence

in the Testator, the Writ shall be in the *Detinet;* *ut supra:* So if they (the Executors) bring Debt on a Judgment given in Trespass brought by them of Goods taken out of the Possession of their Testator; *contra* if it was *De bonis Testatoris extra custodiam sua;* per Parks.

But if they take an Obligation for a Contract made to the Testator, or if they sell Goods of the Testator, it shall be *Debet* and *Detinet;* because the Commencement of the Action was in the Executors. 20 H. 6. 415. b. That it shall be in the *Detinet* adjudged. See 17 Ed. 3. *Brief* 27.

Command

Command B. Executor of the Testament of S. and the Abbot of C. and Friar A. of C. Concanon of the same Abbot of C. Coexecutor of the said Testament of the aforesaid B. &c. twenty Pounds. And if they bring an Action the Writ shall be: Command D. &c. that he render to B. Executor of the Testament of S. and to the Abbot of C. Friar A. of C. Concanon of the same Abbot of C. Coexecutor of the said Testament of the aforesaid B.

Joinder in Action 75. H. 7. 8. Keb. A Lease for Years to a fe- cular Man and an Abbot; Quere how they hold. See 15 Eliz. Pow. 441. The Heir of the Heir shall be charged.

B And if a Man be bound unto B. and an Abbot in twenty Pounds, and B. dieth, his Executors and the Abbot shall join in the Action of Debt, and the Writ shall be such: Lit. 61.

Command C. &c. that justly, &c. he render to B. and M. Executors of the Testament of R. and to the Abbot of C. ten Pounds, &c. which, &c. and unless, &c. and the aforesaid Executors and Abbot shall make you secure, &c.

And if a Writ of Debt be brought against the Heir upon an Obligation of his Ancestors, the Writ shall be such: Command A of S. Son and Heir of B. that he render, &c. (a).

C (b) And if there be divers Heirs, then the Writ shall be, Command A. of S. Brother and one of the Heirs of B. and B. Cousin and the other Heir of the same B. &c.

D And if a Man be in Debt, and die intestate, or the Executors refuse to be Executors, for which the Goods come to the Hands of the Ordinary, the Creditors shall have an Action of Debt against the Ordinary by the Statute of West. 2. cap. 19. and the Writ shall be such:

(c) Command A. Bishop of Lincoln, to whose Hand came the Goods and Chattels which were B.'s who died intestate, as it is said, that justly, &c. he render, &c.

And if the Goods come unto the Hands of the Ordinary, and afterwards the Ordinary maketh Executors, and dieth, the Creditor shall have an Action of Debt against the Executors of the Ordinary, and the Writ shall be such:

(a) See a Petition in Parliament against charging the Heir in such a Case. Parl. 25 Ed. 3. No. 35. Note; the Words *Fil' & hered'* were omitted, yet held good, 10 Ed. 3. 15. yet it is otherwise, if the Writ be *Filio & heredi apparenti*, and he counts against him as Son and Heir generally. Puf. 35 Eliz. Rot. 242. Newdigate's Case, 32 Ed. 3. Brief 289. and it shall be in the Debt. Ibidem 294.

(b) See 11 H. 7. 12. 11 Ed. 3. Debt 7. 10 Ed. 3. 63. 7 Eliz. 277.

(c) See 11 H. 4. 71. per Hankf. without counting that he is Ordinary of the Place. See 17 Ed. 2. Brief 822. that it does not lie at Common Law. Dyer 297. Vide contr. and Note; where it is against the Bishop only for the Goods which he administered within his Diocese, adjudged otherwise, and Note; if the Ordinary administers 100 l. and afterwards commits Ad-

ministration, he is yet liable. 12 R. 2. Administration 21.

See 17 Ed. 2. Brief 822. the Writ was brought against the Dean himself as Guardian, &c. and they were at Issue thereon. See 11 Ed. 3. Executor 77. where a Writ was brought against the Executors of a Dean. Ald. doubted. For by him here the Executors are to be charged, for that the Goods of the Intestate came to the Hands of the Ordinary, and yet it seems they are not chargeable as Executors of the Ordinary, no more than the Executors of an Administrator. See Brudenell's Case, 5 Co. 9.

Note; The Stat. of West. 2. cap. 21. 31 Ed. 3. 11. Administrators and the Ordinary charged in the same Manner, viz. as Executors. See 24 Ed. 3. 54. Rot. Parl. 9 Ed. 2. M. 5. Dyer 271.

Writ of Debt.

Command A. of B. and C. of T. Executors of the Testament of Master R. of P. late Dean of the Church of blessed Peter of York, and Guardian of the spirituality of the Archbishoprick of York, the See being vacant, to whose Hands came the Goods and Chattels which were E.'s of B. who died intestate, as it is said, that justly, &c. be render, &c. (a)

And it appeareth by the Register, that in Anno 16 Ed. 3. the Plaintiff was (b) answered unto such Writ which he brought against the Executors of the Ordinary.

14 H. 4. 30.
So against
Guardian of
the Spiritual-
ties.

And there is a Writ of Debt in the Register for the Ordinary, against him who was indebted to him who died intestate. But the Opinion of the Sages of the Law at this Day is, that the (c) Ordinary shall not have an Action of Debt against those who were indebted to the Intestate, because the Action is given to the Administrator, and the Ordinary may commit Administration of the Goods (d) when he pleaseth. But before the Statute of 31 Ed. 3. cap. 11. the Administrators could not have an Action of Debt against the Debtors, wherefore it was then thought Reason, that some Person should have the Action for those Debts, &c. But the Ordinary at this Day may have an Action of Tres-

(a) *Quod juste, &c.* Note; this Clause is where the Executors refuse. Reg. 141. Dyer 236. 6 Eliz. 280. a. 11 Ed. 3. Bro. Executors 161. Fitz. 77. 17 Ed. 2. Brief 822.

(b) Note; This Writ here is mistaken, for the Writ which he speaks of is brought against the Deacon himself, 16 Ed. 2. and not against his Executors. 16 Ed. 3. See 11 Ed. 3. Executors 77.

(c) See 7 H. 4. 18. 18 H. 6. 23. accordant. And therefore, if A. be indebted to B. and B. to C. and B. dies Intestate, C. cannot attach the Debt of B. in the Hands of the Ordinary by the Custom of London. Dyer 247. *Quære Kelw.* 127. if he can release the Debt. See 16 Ed. Executors 77. per Tr.

(d) Even by Parol; *Quære* 9 H. 5. 5. he may repeal it, and therefore the Committing the Administration transfers the Power from the Ordinary to the Administrator, and therefore the Administrator shall have Trespass for a Trespass done to the Goods, or Debt for Rent Arrear, before the Administration committed, and after the Death of the Testator, for the Law adjudges him Administrator *ab initio*. 18 H. 6. 23.

Note; No Account lay for an Administrator at Common Law. 19 Ed. 3. Administrator 20. Also at Common Law, before the Stat. 31 Ed. 3. cap. 11. the Ordinary might commit Administration, and therefore he shall be discharged for doing it, *Plo.* 280. and Debt was maintainable against them, but not by the Name of Administrators, but as Executors, 38 Ed. 3. 21. and the Action is given against them as Administrators, by the Statute 31 Ed. 3. &c. and is

agreed *per omnes*. 11 H. 4. 73. and *Lib. Intr.*— And therefore the Action against them is founded on the Statute as well as the Action for them, and therefore he that administers *de son Tort*, shall not be called Administrator, but Executor. 35 H. 6. 31. per Moile.

The Form of the Count is, *cui Administratio, &c. per I. S. Official' loci illius ordinari. apud S. post Mort' prædicti G. commissa fuit*; so that it is necessary for the Plaintiff to shew that the Defendant was made Administrator by the Ordinary in his Count, else it is not good. 44 Ed. 3. 16. per Cur. 11 H. 4. 73. per Thorn. Hill and Culp. *contra Hankf.* See *contra* 9 H. 5. 7. for it is there said, that it shall be intended to be committed by the Ordinary; and for that it may be so intended, you need not count on a Commission by the Ordinary in an Action against them, 35 H. 6. 46. (See *T. Jon.*) also the Ordinary's Right might thereby be drawn in Question, 37 H. 6. 27. and therefore in this Case it is no Plea to say *N' unque Administrator, ne unque Administrator come Administrator*; but only that Administration was not committed to him, 35 H. 6. 38. 9 H. 5. 7. 11 H. 4. 73. per Hill, and if the Defendant pleads that Administration was committed to him, and *I. S.* not named, to which he agreed, the other shall not say that *I. S.* never administered, without traversing the Commission of the Administration, or the Agreement; but it is otherwise, if such Agreement be not formed; for there *per Cur.* it is a good Issue that *I. S.* never administered. 8 H. 6. 2. 9 H. 6. 6. 20 H. 6. 1.

pass for taking of the Goods out of his own Possession, but not for taking them out of his Possession who died intestate, as Administrators may have.

E If a Man be retained in *England* to do Service beyond Sea, receiving ten Pounds *per Annum*, he shall have an Action of Debt in *England* where the Retainer was.

F If a Man marries a Woman who is in Debt to divers Persons, the Husband and Wife shall be sued for the Debts, living the Wife: But if the Wife die, the Husband shall not be charged for the Debt after the Death of the Wife, if the Creditor of the Husband and Wife do not recover the Debt during the Coverture, which was due by the Wife before the Coverture: For then, altho' the Wife dieth, yet the Husband shall be charged for that Debt by that Recovery after the Death of the Wife. 48 Ed. 3. 1.
49 Ed. 3. 25.
20 H. 6. 11,
22.
8 Ed. 4. 11.
F. Dett 168.

G (a) A Man shall be charged in Debt for the Contract of his Bailiff or Servant, where he giveth Authority unto his Bailiff or Servant to buy and sell for him: And so for the Contract of the Wife, if he give such Authority to his Wife, otherwise not. 2 R. 3. Fitz.
Dett 3.

H If a Man lease Lands for Years rendring Rent (b), and for Default of Payment, that he shall re-enter; if he do re-enter in the Land for not Payment of the Rent, yet he may have an Action of Debt for the Rent, for which he doth re-enter, and in the Writ shall recover the Rent, for which he re-entred. 17 Ed. 3. 48.
18 Ed. 3.
Debt 6.
36 Ed. 3. 7.
Debt 10.

I (c) If a Man bind him and his Heirs unto another in twenty Pounds and dieth, the Heir shall be charged to pay the same, if he have Lands by Descent in Fee-simple from his Ancestors, otherwise not. But if a Man be bounden in an Obligation to one and his Heirs, and the Obligee dieth, his Heir shall not have an Action of Debt upon the Obligation, but his Executors. *Post.* 122. G. 14 Ed. 3.
Debt 135.
A Man was
bound to one
and his Heirs,
and holden the
Heir should
not have Debt

living the Executors. 9 H. 6. 58. The Heir shall not have Detinue for a Deed bailed by his Father. 19 H. 6. 4.
48 Ed. 3. 12. It is said, that if the Ordinary do not commit Administration, the Heir shall have Debt.

(a) If

(a) But if the Bailiff in that Case makes a Contract without any special Authority, and it comes to his own Use, *Quare* 2 H. 3. Debt 8. 34 Ed. 1. Debt 6. 163. 13 H. 4. Debt 179. 21 H. 7. 4. See a Diversity between an Agreement for Goods and the coming of them to the Use of the Master. See 27 H. 8. 25.

(b) So if he makes a Lease for Life rendring Rent, and surrenders, &c. 17 Ed. 3. 48, 73. 18 Ed. 3. 10. 30 Ed. 3. 7. 38 Ed. 3. 10. *contr.* by some, 19 H. 6. 42. for the Re entry is not a Penalty, so of a *Nomine pænæ*. See 38 Ed. 3. 22. 18 Ed. 3. 9. 19 H. 6. 42. 6 H. 7. 3.

(c) See a special Judgment against the Heir on a *Nil dicit*, *Dyer* 344. when against the Executors of the Heir; so if the eldest Son enters after the Death of the Father, and dies, Debt

lies against the younger Son, as Heir to the Father. *Dyer* 368. *Note*; A. seised of one Acre at Common Law, and three Acres in Gavelkind, obliges himself and his Heirs by Bond to B. and dies, having three Sons C. D. and E. E aliens his Purparty, B. brings Debt against C. and D. and pending the Writ, E. repurchases. 1. If the Elder had not Assets at Common Law, it seems of Necessity, that the Writ ought to be against all of them, 11 H. 7. 12. 38 H. 6. 22. and so of a Vouchee, for they are *in eodem gradu*. 2. If the Elder took by Descent at Common Law, it seems that he shall be charged Sole; *Quare*, for thereby his Purparty in Gavelkind should be also liable, and therefore adjudged, 11 Ed. 3. Dett 27. *contr.* but where he has Assets at Common Law, see 38 Ed. 3. 22.

3. It

19 H. 4. Debt 166. (a) If a Man promise to one twenty Pounds to marry his Daughter, and K he marrieth her, he shall have an Action of Debt against him upon that Promise. *H.* 31 *Ed.* 3.

45 *Ed.* 3. 24. ac. if it be by Deed. (b) If a Parson have an Annuity in Fee in the Right of his Church, and L 15 *Ed.* 4. 32. the Annuity is behind, and the Parson dieth, his Executors shall have Debt for the Arrearages of the Annuity in the Life of the Testator.

37 H. 6. 8. If a Man grant to one a Rent in Fee, and further grant, that if the Rent M ac. 21 H. 7. 5. be behind, &c. that he shall forfeit for a Penalty forty Shillings to the Gran- 7 H. 6. 19. tee and his Heirs, if the Rent be arrear, the Grantee shall have Debt for the 11 H. 5. 95. Penalty. And so the Heir shall have the Penalty, and shall have Debt for the Thirning and Skreen, that same, because it is an Inheritance, and perhaps may continue, &c.

If a Man be condemned in Debt or Damages, and be committed unto A Prison for the same; if the Gaoler suffer him to go at Liberty, or he escape

[121.]

But note, that if a Man be in Prison by a *Capias ad Computand.* and after escape, no Debt, but Action upon the Case, because he is not in Prison for any Duty, by Choke and Pigot. 15 *Ed.* 4. 19. 16 *Ed.* 4. 2 and 3

3. It seems there may be one Action against them, and several Counts, *viz.* against *E.* as Heir general, and against *C.* and *D.* as Heirs by Gavelkind, for if he does not count severally, he shall not have Execution but of the Lands in Gavelkind. *Quere* 11 *Ed.* 3. *Dett* 7. and so in Case of Voucher. 4 *Ed.* 3. 55. *per Will.* 4. The Writ ought to be against *C. D.* and *E.* though *E.* has nothing, but if *C.* had Assets at Common Law, and *D.* and *E.* nothing, it should be brought against *C.* alone, but if the Writ had been against all, seeing *E.* had nothing, the whole should be levied on the others. 11 *Ed.* 3. 7. 6 *Ed.* 3. 50. 5. Although the Heir aliens, and repurchases before, or pending the Writ, he is yet liable. 26 *H.* 8. 1. 27 *Ed.* 3. 82. 10 *Ed.* 3. 15. adjudged. See 19 *H.* 6. 46. 48 *Ed.* 3. 32. 40 *Ed.* 3. 10. 6. If the Writ were brought against the elder Son only, and pending that the Land in Gavelkind had descended to him and the other, the Writ should abate; *per Shard.* 11 *Ed.* 3. *Debt* 7. See 11 *H.* 7. 12. If *A.* seized of Lands on the Part of his Father, bind himself, and dies without Issue, several Actions may be brought against the several Heirs, but only one Execution. *Quere,* and *Note,* It seems that by the Re-purchase, he shall abate the Writ against the Elder only. *Dyer* 230. and 204. Debt was against three Heirs in Gavelkind; they were outlawed, and two purchase a Charter of Pardon, they shall not plead

Nonage of the third, because he is out of Court, but must answer alone. *Dyer* 224. See where the Heir shall have Debt on an Obligation to his Ancestor. 49 *Aff.* 4. See Debt by the Heir on an Obligation made to his Father and his Heirs, the Defendant pleads a Release by the Father's Executors, but was forced to answer to the Deed of his Father. 14 *Ed.* 3. (See 19 *H.* 6. 41. a Difference between *Debt* and *Detinue* by the Heir.) See 14 *Ed.* 3. *Dett* 135, 139, 140.

(a) If a Promise be to pay one forty Pounds for Service done, Debt lies, and he shall count *unde devenit obligat.* in such a Sum. 29 *Ed.* 3. 25. So if one promise to another twenty Pounds if he will marry his Daughter, Debt lies without any Specialty. 31 *Ed.* 3. *Dett* 8. 34 *Ed.* 1. *Debt* 159. 1 *R.* 2. *Debt* 166. See 45 *Ed.* 3. 24. 29 *Ed.* 3. 33. *Ant.* 44. O, but 14 *Ed.* 4. 6. *contra.*

(b) Debt by the Executors of a Parson for Arrears of an Annuity, which his Predecessor had by Prescription, 12 *H.* 6. 8. so a Successor shall be charged with the Arrears of an Annuity incurred in the Life of his Predecessor, 21 *H.* 7. 5. yet the Successor of *St. Crofs* could not recover Damages for Arrears of Annuity in Time of his Predecessor, but only for Arrears in his own Time; nor could a Parson who was Presentative, and not Elective. 20 *Aff.* 4.

out of Prison, (*a*) the Gaoler shall be chargeable in Debt to him at whose Suit he was imprisoned, and his Executors (*b*).

B If a Man lend another Man a Horfe until a certain Day, and then he to 50 Ed. 3. 16. redeliver the Horfe or ten Pounds at the same Day, after the Day if the Horfe be not delivered, it is in his Election to bring an Action of Debt for the Horfe in the *Detinet*, or an Action of Debt for the ten Pounds in the *Debet* (*c*).

C (*d*) If a Man make a Lease for Life unto a Woman, rendring Rent, if she 26 Ed. 3. 64. marry, and after the Rent is behind, and the Wife dieth, the Husband shall Debt 180. be charged in an Action of Debt for the Rent behind, because he took the 10 H. 6. 11. Profits of the Lands by Reason of his Wife; otherwise it is of an Obligation 9 H. 6. 29. made by his Wife before Marriage, then the Husband shall not be charged if 20 H. 6. 45. a Recovery be not against him and his Wife in the Life of the Wife (*e*). Alfoough. 49 Ed. 3. 25.

If a Woman be endowed of a Rent, and afterwards taketh Husband, and the Rent is arrear, and the Wife dieth, the Husband shall have an Action of V. 14 H. 6. 26. Debt for the Rent, because it was a Duty in him during the Marriage. But 10 H. 6. 11. if a Man be bounden unto a Woman, and she taketh Husband, and the Day 4 Co. 89. of Payment cometh during Marriage, and after the Wife dieth, the Husband

(*a*) Note; Tho' the Gaoler retakes him, if it be after the Writ, it is no Excuse. 31 Ed. 1. Debt 162. Note; on the Escape, against the Sheriff it is a new Debt; and therefore, if the Mayor of the Staple suffers one to go at large, who is in Prison for Debt for Merchandise, and a new Mayor is, Debt lies against him, not on the Statute-Staple, but at Common Law: So by *Passon*, a Release made to him who escapes is no Plea in Debt against the Sheriff. 9 H. 6. 19. Debt on Escape does not lie against an Heir or Executor of a Gaoler. *Dyer* 271, 322. 41 Aff. 15. In Debt by the Conusee of a Statute Staple, Note 13 Ed. 3. *Barr.* 253. Debt lies by the Abbot of *W.* for suffering *A.* to go at large, who was delivered to the Gaoler by Auditors for Arrears of Account; and it is agreed, 1. That if *A.* escapes, and after sues an *Ex parte talis*, yet pending that, Debt lies against the Gaoler. 2. If the Defendant let him go at large by the Command of the Abbot, though it be without Deed, yet he is discharged; for the Abbot was sovereign Gaoler, and the other but his Deputy; *aliter*, if it had not been so. See 10 H. 7. 3. 27 H. 8. 24. *Carvedy's Case*. If three are imprisoned, and one only escape, Debt lies against the Sheriff, if it be on a joint Condemnation. 20 H. 7. *Kelw.* 68.

(*b*) See 7 H. 6. 5. and Debt against a Sheriff, 11 Ed. 2. Debt 172. 13 H. 7. 2. 34 Ed. 1. Debt 162. Stat. 1 R. 2. and *Westm.* 2. and *infra* P.

(*c*) See 13 Ed. 4. 4. 9 Ed. 4. 37, 49. 26 Ed. 3. 71.

(*d*) Note Sir *W. Levings's Case*, 26 Ed. 3. 64. *A.* grants a Rent to *B.* for Life out of the Manor of *C.* and afterwards enfeoffs *D.* of the Manor who takes *G.* to Husband, and then *E.* dies, and his Executors bring Debt against *G.* and adjudged, 1. That for all Arrears incurred after the Coverture, Debt lies against the Husband; or if he were Dead, against his Executors; but, 2. For all Arrears incurred before the Coverture, the Action shall be brought against the Husband and Wife. See 10 H. 6. 11, 12, accordant.

(*e*) See 10 H. 6. 10. *per Babb.* and Note 12 R. 2. Account 49. *A.* Lessee for the Life of a Feme Covert rendring Rent, *B.* receives the Rent as Receiver, the Husband dies, the Wife shall have Account against *B.* and not against the Executors of the Husband; *aliter* as it seemed to *Babb. &c.* if the Receipt had been of a personal Duty.

See 1 Lev. 26. 4 Co. 89. 10 H. 7. 11. 6 Ed. 2. Execution 109. 10 H. 6. 12. 49 Ed. 3. 25. 39 H. 6. 22.

shall not have an Action of Debt upon the Bond, because it was a Duty due unto the Wife and a Thing in Action before the Marriage (a).

19 H. 6. 14.
Quare, Ascue
pro' Newton
con.

(b) If a Parson have an Annuity in Fee, and the same is behind, and the Parson doth resign, yet he shall have an Action of Debt for the Arrearages before the Resignation.

And if a Man lease a Manor for Life, and the Rent is behind, which the Tenants who hold of the Manor are to pay, and the Lessee for Life of the Manor dieth, his Executors shall have Debt for the Arrearages of the Rent due by the Tenants of the Manor.

(c) And so if the Tenant for Life of the Manor, surrender his Estate to him in the Reversion of the Manor, yet he shall have Debt against the Tenants of the Manor for the Arrearages before.

37 H. 6. 25.
If a Liberate
be delivered
to Customers
or other Col-
lectors that
will satisfy,
they shall be

(d) If a Man have a Patent from the King to have a certain Sum for Term of Years, or for Life, out of the Customs of London, and thereupon he have a Liberate to the Customer to pay him, which he delivereth to the Customer, at which Time the Customer hath enough in his Hands to pay him; now by the Delivery of the Liberate, and the Assets in the Hands of the Customer, the Customer is Debtor unto him, and he shall upon this Matter have Debt against him.

discharged against all others. 27 H. 6. 9. ac. 21 H. 6. Debt 43.

(e) If two submit themselves to an Award, and the Arbitrators award that one shall pay the other ten Pounds, he shall have an Action of Debt upon that Arbitrament.

37 H. 6. 35.

(f) If an Abbot hath an Annuity in Fee, and the same is behind, he shall not have an Action of Debt for the Arrearages, because the Annuity continueth.

(a) And yet it is held, the Husband may release it. 15 H. 6. 41.

(b) See accordant 19 H. 6. 42. and so Note; the Arrears here do not belong to the Successor, yet see 19 H. 6. 44. where it is a sole Corporation Regular, which cannot make an Executor, as an Abbot, Prior, Master or Warden of an Hospital, &c. there the Successor shall have the Arrears of an Annuity, and so of a Corporation Aggregate. 19 H. 6. 42. per Ascue. See 16 Ed. 3. 22. 4 Ed. 3. 9.

(c) See accordant 9 H. 7. 16, 17, yet if it be a Lease for Years, the Lessee cannot have Debt during the Term.

(d) And so if after Delivery of one Tally, another is delivered, it lies for that first delivered. 21 H. 6. Debt 43.

(e) Note; In Debt on Arbitrament, the Cause why such Sum was awarded, shall not come in

Debate, but in Debt on Account before Auditors, it may be debated, whether there were such Account, or if there were such Receipt by the Defendant. 20 H. 6. 6. And therefore, if the Arrears of a Lease for Years, or a Thing be delivered, for which Detinue lies, are put in the Account, the Party shall have his Law, if it appears by Examination; for notwithstanding such Account, he may have Debt for the Rent, or Detinue for the Goods, 20 H. 6. 16. and therefore in Debt on Arrears of an Account before Auditors, it is a good Plea, *Nul tiel Account*, or *Nil debet modo et forma*, and give in Evidence, there was not any such Account; for if so, there cannot be any Arrears. 20 H. 6. 24.

(f) See 19 H. 6. 42. the Case of a designed Parson well debated. See 17 Ed. 3. 12. 19 Ed. 2. Debt 176. 10 H. 6. 24. 20 and 28 H. 6.

- I Neither shall a Parson have an Action of Debt for the Arrearages of an Annuity, which he hath in Fee during the Time that he is Parson: But if he resign, he shall, or if he dieth, his Executors shall have an Action of Debt for the same. And if a Man who is (a) Bailiff do account (b) before Auditors, and it is found that he hath expended more than he hath received, for the Surplusage he shall have an Action of Debt against the Lord whose Bailiff he was. But if a Receiver account, and is found in Surplusage, many say that he shall not have an Action of Debt for the same, because he is bounden to lay out any Parcel thereof: But it seemeth if he do it by Command of the Lord, that then it is Reason that he have an Action of Debt against the Lord for the Surplusage. 38 H. 6. 5.
7 H. 4. 3.
- K (c) An Abbot shall be charged in an Action of Debt upon a Loan of Money made unto his Predecessor, if the Money came to the Use of the House. 41 Ed. 3.
Debt 127.
- L An Attorney shall have an Action of Debt against his Client for Money which he hath paid unto any Person for his Client, for Cofts of Suit, or unto his Counsel, &c. 3 Ed. 4. 26.
The Writ shall
be general,
and the Count
special.
20 H. 6. 21.
Newton.
28 H. 6. 4.
39 H. 6. 22.
7. 5. Carter.
- M (d) If a Man contract to pay Money for a Thing which he hath bought; if he take a Bond for the Money, the Contract is discharged, and he shall not have an Action of Debt upon the Contract. 5 H. 7. 18. ac.
fo Lord by
Escheat of a
Reversion.
- ac. 1 H. 6. 8. per Babbington. 9 Ed. 4. 20. and so 10 H. 7. 21 and 24. 22 H. 6. 16. 21 H. 3 H. 4. 17.
- N (e) If a Man maketh a Lease for Years, rendering Rent, of Lands deviseable by Will, and afterwards deviseth the Reversion of the same Lands unto a Stranger in Fee, the Devisee shall have an Action of Debt for the Rent reserved, without any Attornment of the Tenant for Years. But if the Lessor hath granted the Reversion by Fine or Deed, the Grantee shall not have an Action of Debt without Attornment of the Lessee for the Rent reserved.
- O (e) If a Man be indebted, and entereth into Religion, his Executors shall be sued for the Debt, and not the Abbot who accepted him into Religion. 4 Ed. 4. 25.
Danby,
5 H. 7. 24.
5 H. 5. 8.
- Brion, 13 H. 4. Debt 167.

(a) See 7 H. 4. 3. Note; This Allowance before Auditors is made Parcel of the Account, and as well of Record, and therefore on such Surplusage, Debt lies against the Executors. See 10 H. 6. 25. so adjudged.

(b) Because a Bailiff by his Office is bound to be at Expences, 29 Ed. 3. 20. and so it seems is a Receiver to merchandize, &c. and a general Receiver retained to travel for his Receipts, &c. Contr. of a Receiver of a certain Sum, for he shall have no Allowance of such Expences as he makes without Orders; and note, in such Action for Surplusage by a Bailiff or Receiver, he shall wage his Law. 14 H. 6. 24. 36 H. 6. 6. For the Auditors are made Judges in Advantage of the Master, and not of the Bailiff; and this

was so at Common Law; *sed contr.* adjudged by all the Justices in C. S. 21 H. 6. 16. 19 Ed. 2. Debt 176.

(c) See 41 Ed. 3. Debt 127. 13 Ed. 4. 4. 22 Ed. 3. 8. 5 H. 7. 25. 39 H. 6. 22. 22 H. 6. 56. (L) 10 H. 4. Debt 158.

(d) But it is otherwise, if a Stranger makes an Obligation for the same Debt. 35 Ed. 3. Debt 83. See 11 H. 4. 79. 13 H. 4. 1. 10 H. 7. 21.

(e) See 13 H. 4. Debt 167, 467. 4 Ed. 2. Ib. 171. 5 H. 7. 18. 34 H. 6. 6. Lit. 130. (O) See 5 H. 5. 8. 9 Ed. 2. Debt 171. but 5 H. 7. 20. 4 Ed. 4. 25. 18 Ed. 4. 19. *seem contr.*

7 H. 6 5. 1 H. 6 Debt 26. (a) If a Man be condemned in Trespass, or in Debt upon a Bond, where P
 7 H. 4. 4. he denieth his Deed, and afterwards he is taken by a *Capias pro fine* at the
 4 Ed. 4. 16. King's Suit within the Year, and committed to Prison; if the Gaoler suffer
 22 Ed. 4. 67. him to escape, he shall have an Action of Debt against the Gaoler: Yet he
 7 H. 4. 14. was not committed to Prison at his Suit, but at the King's Suit. But within
 4 Ed. 4. 16. the Year after the Condemnation and Judgment, the Suit for the King shall
 22 Aff. 74. serve as well for the Party as the King, because the King was intitled to it by
 21 Ed. 4. 67. the Party, but after not: For it shall be intended that the Party is agreed with
 14 H. 7. 15. him who is condemned, and therefore after the Year he shall be put to his
 19, 20 11 H. Scire facias upon the Judgment (b).

[122.] (c) If a Man leaseth Lands for Term of Years, rendering Rent, and after- A
 9 Ed. 3. 7. wards the Rent is behind, and the Lessee surrendereth his Term, yet the
 Debt 149. Lessor shall have an Action of Debt for the Arrearages before, as it seemeth
 19 H. 6. by P. 38 Ed. 3. *tamen quere*, for the Opinion is contrary to 2 H. 6

Vide 14 H. 8. If a Servant will not do his Service, by the Statute of 24 Ed. 3. cap. 9. he B
 14. for Waste. shall be arrested and committed to the Gaol; and if the Gaoler set him at
 7 H. 6. 2. large, he shall lose ten Pounds to the King, and five Pounds to the Party.
 Now if the Gaoler set such Prisoner at large, the Party who would have him
 detained, shall have an Action of Debt against the Gaoler.

43 Ed. 3. 2. If a Man recover Damages in an Action of Waste, he may have an Action C
 of Debt upon the Recovery, if he will.

3 Ed. 4. 27. And so a Man may have an Action of Debt upon a Statute-merchant or D
 Quare. Staple, or upon a Recognizance, or may have Execution according to the
 43 Ed. 3. 2. Statute, at his Pleasure.

A Prior did recover an Annuity in Fee against a Parson, and afterwards he E
 sued a *Scire facias* against the Parson, and did recover in the *Scire facias* the
 Arrearages of the Annuity, and afterwards he brought an Action of Debt
 against the Parson upon the Recovery in the *Scire facias* for the Arrearage,
 and it was maintainable.

(a) See 14 H. 7. 15. 4 Ed. 4. 16. 36 H. 6. 24. 22 Aff. 73. Note; In Debt on Obligation, the Defendant denies his Deed, but found against him; Judgment is given, and he taken by *Capias pro fine*, and the Plaintiff prayed an *Elegit*. Stoner said, he should make Fine and Discharge; but *Green contr.* 17 Ed. 3. 57. and see a Diversity *inter* Debt and Trespass, 50 Ed. 3. 4. See 11 H. 7. 15. 13 H. 7. 21. 7 H. 6. 6. 6 Ed. 4. 4. 1 H. 7. 10, 20. 36 H. 6. 33. 7 H. 4. 4. And Note, the Case here put is Somers's Case in Debt on an Escape, where it was held, That notwithstanding the taking of the Party *pro fine*, yet the Plaintiff may pray Execution by *Elegit*; but yet because the Party Plaintiff shall be satisfied his Execution before the King shall be satisfied the Fine, he shall be adjudged to be in Execution for the Party, as well as for the King, so that the Sheriff ought not to detain him, although the King had pardoned the Fine by Assent of the Party. Also, by the Writ against

the Warden, if he proved by Relation, that he elected him to be in Execution for him *ab initio*. — *Quere*, if the King pardons him, and yet the Sheriff detains him, and afterwards he who recovered, sues an *Elegit*, if the Imprisonment after the Fine be punishable.

(b) But after the Year he may pray that the Party be in Execution for him; so if he be taken *pro fine* (*ut supra*) in such Case Action or *Capias* does not lie as in Assise, Reddition, &c.

(c) Note; He who surrenders in Fact, shall have the Emblements, 30 Ed. 3. 9. that by the Surrender of Parcel, the whole Rent is extinct; *per Monson.* 14 Eliz. Note; Surrender is a good Plea in Bar for Rent incurred after, 9 Ed. 3. 7. Note; The Case is stronger if it be of a Lease for Lives, and yet such was held good, but over-ruled for miscounting, *i. e.* not shewing the Commencement. 30 Ed. 3. 10. See 14 H. 6. 41. 38 Ed. 3. 10. *contr.* 19 H. 6. 4.

- F (a) An Abbot shall be charged in an Action of Debt for Victuals, or other necessary Things bought by the Butler, or other Officer who is deputed to make Purveyance for the Abbey in Time of Vacation. 26 Ed. 3. 55.
Debt 165.
- G (b) If a Man levy Aid of his Tenants for the Marriage of his Daughter, and dieth, the Daughter not married, the Daughter shall have an Action of Debt against the Executors of her Father for the Aid levied; and if the Executors have not any Thing, she shall have an Action of Debt against the Heir for that Aid, if he have any Thing by Descent. 3 Ed. 3. Trin.
North. Filz.
Debt 57.
See 82. Lac.
- H (c) If two Coparceners make Partition, and one granteth or promiseth unto the other a certain Sum of Money for the Equality of the Partition, she shall have an Action of Debt upon this Promise, and shall recover the Money. 30 Ed. 3.
Debt 131.
- I (d) If a Man make a Tally, and make Bond thereupon, and seal and deliver it as his Deed, yet it shall not bind him, but he may plead against the same, that he owed him nothing, or wage his Law. For an Obligation ought to be made in Writing in Parchment or Paper, and not written upon any Piece of Wood, as a Tally is. 12 R. 2. Debt.
44 Ed. 3. 21.
44 Ed. 3. 2.
& 9 H. 5. 24.
If a Man become Debtor for another by Word, it shall not make him Debtor, if not by the Custom of London.
- K And a Man shall have an Action of Debt against him who becometh Pledge for another upon his Promise to pay the Money, without any Writing made thereof; *quod vide* in Title *Pledge acquietand'*, P. 43 Ed. 31.

(a) So for Money borrowed or lent, which came to the Use of the House, 41 Ed. 1. Debt 127. so if the Commonk makes a Deed, testifying the Debt. 4 Ed. 2. Debt 168. and see 35 Ed. 3. 48. 26 Ed. 3. 55. 7 Ed. 3. Debt.

(b) See 3 Ed. 3. Debt 157. it shall be in the Debt against an Heir.

(c) 14 Ed. 3. Debt 137. Co. Lit. 169. b.

(d) See 2 R. 2. Debt 4. 12 H. 4. 23. 25 Ed. 3. 40.

(a) *Writ de rationabili Parte Bonorum.*

If the Father hath two Sons, and maketh one of them his Executor, *Quere* if he shall have any Part as Son, because he is Executor, and hath Advance-ment by that Form :

THIS Writ lieth where the Wife after the Death of her Husband cannot have the third Part of her Husband's Goods after the Debts are paid, and Funeral Expences performed : For then she may have this Writ against the Executors of her Husband : And it seemeth by the Statute of *Magna Charta*, c. 18. that this was the Common Law of the Realm ; and so it appeareth by *Glanvil*, that it is the Common Law, that after the Debts paid, the Goods shall be divided into three Parts : One Part for the Wife, another Part for Sons and Daughters, and the third unto the Executors ; but yet the Writs in the Register rehearse the Customs of the Counties, and are of this Form :

A Woman did demand the Moiety of her Husband's Goods, because he had no Children, and counted upon the Custom of the Realm. 31 Ed. 3. But 21 H. 6. 1 and 2. seemeth, it is by Custom, and not by the Law of the Land, 7 Ed. 4. 20. ac. M. 19. and 20 Eliz. in B. R. A Writ was brought and allowed there, notwithstanding that Exception was taken at it, that it was maintainable by special Custom in London. 1 Ed. 4. 5. Pilling. ac. 30 H. 6. Respond. 95. A Woman brought the Writ for the Moiety, and counted upon the Custom, not speaking of any Town, or that it was the Custom of the Realm. 28 H. 6. 4. 40 Ed. 3. 8. 3 Ed. 3. Debt 156. Counts by the Custom of the Town of Northampton, 17 Ed. 99 and 76. and that it is by the Common Law. 7 Ed. 4. 20. Exception was taken, because he did not count that the Custom did continue.

The King to the Sheriff, &c. If A. who was the Wife of B. &c. shall make you secure, &c. then summon, &c. C. and D. Executors of the Testament of the aforesaid B. that they be, &c. to shew (b) wherefore, whereas according to the Custom which has hitherto obtained in the County aforesaid, Wives after the Death of their Husbands ought to have a reasonable Part of the Goods and Chattels of their said Husbands, they the said Executors unjustly detain from the aforesaid A. her reasonable Part, to the Value of ten Marks, of the Goods and Chattels which were of the aforesaid B. some time her Husband, and refuse to render the same to her, to the great Damage and Grievance of her the said A. and contrary to the Custom aforesaid : And have there the Summoners and this Writ, &c.

29 Ed. 3. 10. And the like Writ the Sons and Daughters may have against the Executors ; 2 Ed. 2. Fitz. Detinue 561. and the Form is :

30 Ed. ib. 52.

And see 31 H. 8. It hath oftentimes been put in Ure at Common Law, and never demurred upon.

(a) *Note* ; This Writ is not *Debet* but *Detinet*, and so is not within the Stat. 21 Jac. 1. of Limitation of Actions ; adjudged *Trin. 6 Car. 1.* in *C. B. Sherwin's Case*.

See 30 Ed. 3. 26. That it does not lie against Executors, &c. nor against a Stranger who is possessed of Goods only, 39 Ed. 3. 9. yet it seems to lie against an Administrator *de bonis non*, by Custom in *Suffex*, that where the Father dies

seised of Goods, his Heir shall have a reasonable Part. See 7 Ed. 4. 2. 31 Ed. 3. 25. 1 Ed. 2. Detinue 56. 31 H. 8. *Bro. rationabil. Part. 6.* 17 Ed. 3. 9. 17 Ed. Detinue 78. or 58. *F. Detinue 32.* 34 Ed. 2. Detinue 60.

(b) See the Writ, *Quare cum secundum Consuetudinem totius Regni Angl. usitat' & approbat'*, &c. adjudged good. 30 Ed. 3. 26.

*The King, &c. Because A. of N. and S. his Sister, have made us secure, &c. Marriage is no
summon, &c. I. of H. and E. Executors of the Testament of R. of N. that they Advancement,
be, &c. to shew wherefore, whereas according to the Custom which hath hitherto if the Father's
obtained and been approved in the County aforesaid, the Children after the Death Goods be not
of their Fathers, who are not their Heirs (a) nor were promoted in the Life of given in his
their Fathers, ought to have their reasonable Parts of the Goods and Chattels Life, for Issue
which were of their Fathers aforesaid, they the said Executors unjustly detain was taken
from the aforesaid A. of N. and S. after the Death of the aforesaid R. their thereupon.
Father, whose Heirs they are not, nor who in the Life of their said Father were 3 Ed. 3.
promoted, their reasonable Parts to the Value of ten Pounds, &c. (as above). Debt 155.*

Seeta ad Molendinum.

MSECTA ad Molendinum lieth, where a Man by an Usage Time out of Mind, **S** &c. hath used to grind his Corn at the Mill of B. and afterwards he goeth unto another Mill, and (b) withdraweth his Suit from B.'s Mill, then may he have this Writ. And also it seemeth, that the Lord may have this Writ against his free Tenants who hold of him to do Suit at his Mill, and yet he may distrain his Tenants for the Suit, and avow for the same.

A (c) And by Prescription a Man may have Suit to his Mill of the Villains of a Stranger, and have *Seeta ad Molendinum* against them, and that it seemeth by reason of their Residence in certain which they dwell upon. And this Writ is sometimes *Vicontiel*, and shall be sued in the County by a Writ of *Justicies*, at the Plaintiff's Pleasure, or in the Common Pleas by a *Præcipe*, &c. and the Form of the Writ in the County is such :

The King to the Sberiff, &c. We command you, that you justice A. that justly and without Delay be do his Suit to the Mill of E. of N. in C. which he oweth to it, and hath been used to do, as it is said, as he can reasonably shew that he ought to do the same to it, that we may bear no more Clamour for want of Justice. Witness, &c.

Quere, If a Man may create a Tenure at this Day upon a Gift in Tail, or such Estate, P. 20 Eliz.

Com. B. A Lease was made for Life of Parcel of the Demesnes doing Suit to his Mill, and good.

[123.]
Note, That Tenant for Life of a Manor shall not have this for Tenant for

Writ, because it is in the Debet & Solet. 20 Eliz. Dyer. Br. Note 127, 128. Curia Claudenda lieth Writ, and yet the Writ is, Debet & Solet.

(a) So Note, the Marriage is excluded. 1. If it be not by her Father. 2. If she be not promoted. 3 Ed. 3. Debt 156. See 1 Ed. 2. Detinue 56, 186. 30 Ed. 3. 26. 39 Ed. 3. 9. 40 Ed. 3. Bro rationab. Part. 8.

(b) Note in Mich. 3 Car. 1. it was held in the Exchequer, that if the King has a Manor by Wardship or otherwise, within which is a Mill, all the Tenants Customary and others within such Manor shall grind their Corn at the said Mill, though they are not bound thereto by Tenure or otherwise, viz. during the King's Sei-

sin; and this by the ancient Prerogative of the King.

(c) See 22 H. 6. 14. *Seeta ad Molend.* may be maintained as well by Prescription against the Restants, as by Tenure against the Tenants.

See 29 Ed. 3. 12, 17. Note there, the Writ was, that he had suffered six Villains of the same Vill, who held six Carves, &c. and who ought to grind their Corn growing in the same Lands at his Mill, and shews how much each held, and also shewed Seisin and Explees, and recovered.

Quod permittat.

And if the Writ be sued in the Common Pleas, the Writ shall be thus:

Command A. that justly and without Delay he do Suit to the Mill of E. of N. in C. which he oweth to it, and hath been used to do, as it is said: And unless he will do it, &c. then summon, &c.

And by the Rule in the Register, a Man shall have a Writ of *Seeta, &c. B quod faciat seetam ad furnum, & ad thorale, & ad omnia alia hujusmodi.* And Tenant for Life, or in Dower, may maintain this Writ in the *Debet & solet*, for this is of the Nature of a Writ of the Possession: But in the *Debet* only seemeth to be in the meer Right. And the Defendant shall have a View in a *Seeta ad Molendinum* in the *Debet & solet* of Land, &c. of the Mill in which the Suit is to be done (a). And the Process in a *Seeta ad Molendinum* shall D be Summons, Attachment and Distress, &c. and if he do appear after Default, then shall issue a *Distingas ad audiendum Judicium*, and yet he may sue his Default (b). And you may see the Form of the Count in this Writ in the E Book of *Entries*, where he counteth upon a Tenure of Land, &c. and another Count, where he counteth (c) upon Prescription: *Sc.* that the Tenant, and all those which held those Lands, have used to do their Suit at his Mill; *quod vide fol. 169.*

Quod permittat.

QUOD *permittat* lieth where a Man hath Common of Pasture for his Cat- F tle, and he is disturbed by a Stranger, that he cannot use his Common, then shall he have this Writ: And this Writ may be sued by *Justicies* in the G County, or in the Common Pleas; and the Form of the Writ is,

27 H. 8. 12.

The King to the Sheriff, &c. We command you, that you justice A. that justly, &c. he permit B. to have Common of Pasture in N. for one hundred Sheep, &c. or for one hundred Oxen, &c. which he ought to have, as it is said, as he can reasonably shew, that we may hear no more Clamour thereupon, &c. or thus, Common of Pasture in the Land of him the said A. which he ought to have therein, &c. Or thus, That he permit A. to have Common of Pasture in one hundred Acres of him the said A.

V. 2 H. 4. 13.
View granta-
ble in this Writ
yet it is said
3 Ed. 3. that
the Defendant
cannot vouch
in a Quod permittat,
for that it is not a
Præcipe quod reddat.
Vide 45 Ed. 3. 8. in
the View.

And the Rule in the Register is, when Common of Pasture is claimed in the Land of any Person certain, then the certain Number of Cattle are not put in the Writ, &c. but the Form of the *Quod permittat* sued in the Common Pleas is such:

The King to the Sheriff, &c. Command A. that justly, &c. he permit B. to have Common of Pasture in N. and in forty Acres of Wood, which he ought to

(a) See 17 Ed. 3. 29. But not to vouch, 4 Ed. 3. View 149. 13 Ed. 3. Voucher 116. yet Aid lies therein, although he were seised of the Suit by the Hands of him who prayed Aid. 17 Ed. 3. 64.

(b) See 12 Ed. 3. Process 28. 18 Ed. 3. Judgments 120.

(c) See 17 Ed. 4. 64. 22 H. 6. 14. 28 Ed. 3. 12.

have,

have, as it is said: And unless he will do it, and the aforesaid R. shall make you secure, &c. then summon, &c.

And another Form of the Writ for Common append. thus:

The King to the Sheriff, &c. Command A. that justly, &c. he permit B. to have Common of Pasture in N. which belongeth to his Freehold in the same Town, or in another Town, of (z) which he the said A. or the Father of the aforesaid A. whose Heir he is, unjustly and without Judgment disseised R. the Father of the aforesaid B. whose Heir he is, after the first Passage over of Lord Henry the Son of King John into Gascony, as it is said: And unless, &c.

Note: This Writ is in the Nature of a Writ of Entry upon a Disseisin made to his Ancestor.

H And the Rule in the Register is, that the Writ of *Quod permittat* lieth of Common of Pasture, Turbary, Piscary, and reasonable Estovers, against a Disseisor of a Disseisin to the Plaintiff of his Ancestors, by him and his Ancestors, and not in other Degrees, because he ought to have a Writ of Right in the *Debet & solet*.

But an Abbot may have a Writ of *Quod permittat* of a Disseisin made unto his Predecessor, and shall make mention of the Disseisin in his Writ.

I And the Form of the Writ Of free (b) Fishery, is such:

The King, &c. Command A. &c. that, &c. he permit B. to have free Fishery in the Water of him the said A. in N. or thus, in the Water in N. which he ought and hath been used to have in the same, as it is said: And unless, &c.

K There is another Form of the Writ of *Quod permittat*, in the Nature of Mortdauncefor, and is such:

The King, &c. Command A. that, &c. he permit B. to have Common of Pasture in N. in which C. Father, or Mother, or Sister of him the said B. whose Heir he is, was seised, as of Fee (c), as belonging to his Freehold in the same Town, the Day whereon he died: And unless, &c.

3 Ed. 25. Quod permittat 1.

L And if it be a Common in gross, then he ought to put this Clause in the Writ, *As belonging to his Freehold, &c.*

And so a Parson or an Abbot shall have a *Quod permittat* of the Seisin of his Predecessor, and the Writ shall say,

Command, &c. that he permit B. Parson of the Church of C. to have Common of Pasture in N. of which F. some time Parson of C. aforesaid, &c. was seised, as in Right (d) of his Church aforesaid, the Day whereon he died, as it is said: And unless, &c.

31 Ed. 3. Quod permittat 8. 30 Ed. 3. 3. Quod permittat 4. APicbend had the Writ for measuring a Water in the Time of his Predecessor.

And the Rule in the Register is, that in the same Manner as is said before of Common of Pasture, so it may be said of all other Commons, as of Turbary, Piscary, &c.

M And there are divers other Writs of *Quod permittat* of another Nature; as a Man shall have a *Quod permittat* against the Lord, to suffer his Villains to do Suit to his Mill, &c. and that accrueth by Usage and Prescription; the Writ is,

(a) And Note; it ought make the Defendant privy to him that did the Tort. 13 Ed. 3. Brief 6-6.

(b) Note; A Præcipe does not lie *pro Piscaria in Aqua*, but *pro Piscaria* generally, for thereby

the Soil itself is to be recovered. *Temp. Ed. 1. Brief 861. 4 Ed. 3. Feoffment 79.*

(c) *Ut de feodo*, add *& de jure*. 31 Ed. 1. Brief 874.

(d) *Ut de jure Ecclesiar.* or *ut de feodo Ecclesiar.* 31 Ed. 1. *Quod permittat* 8.

(a) The

[124.] *The King, &c. Command A. that justly and without Delay he permit (a) his Villains of C. to do Suit to the Mill of B. &c. in E. &c. And unless, &c. and the aforesaid B. shall make you secure, &c. then summon, &c.* A

If the Miller taketh Toll, then Trespass lieth: But if the Tenant of the Freehold take it, a Quod permittat. 41 Ed. 3. 24. & 44 Ed. 3. ac. Vi. Ed. 1. Br. Bataill 13. 6. Quod permittat 9. a Quod permittat brought of Ettovers.

And another Writ: *Command A. &c. that he permit B. to grind his Demesne Corn of N. at the Mill of him the said A. in N. quit of Multure, which he ought and hath been used to grind at the same Mill, as it is said: And unless, &c. Or, Command A. &c. that he permit B. to draw Water at the Well of him the said A. in N. as he ought and hath been used to draw at it, as it is said: And unless, &c. Or, That he permit B. to water his Flock at the Water of him the said A. in N. as he ought and hath been used to water it, as it is said. Or, That he permit B. to have his free Bull in N. as he ought and hath been used to have, as it is said. Or, That he permit B. to have a certain Way over the Land of him the said A. in N. &c. Or, That he permit B. to have his free Fold in his Demesne Lands in I. which he ought and hath been used to have. Or, That he permit B. to have free Fishery in the Water of him the said A. in N. &c. Or, That he permit B. to have free Passage over the River Humber in the Ship of him the said A. which he ought and hath been used to have in it, as it is said, &c. And unless, &c. But a Man shall not have a Quod permittat of reasonable Estovers in a Wood, or in Turbary, or in Heath, and the like.*

And the like by the Rule in the Register, for in lieu thereof is given the Writ of Assise of Novel Disseisin by the Statute of West. 2. cap. 26.

And a Man shall have a Writ, *That he permit him to erect Ladders in the Soil of him the said L. in B. contiguous to his Mansion, for covering and repairing his Houses there, as often as need shall be, as he ought and hath been used to erect them, as it is said: And unless, &c.*

And a Man may have a Writ of Quod permittat of a Corrody; as, *Command P. Prior, &c. that he permit B. to have competent Sustenance for himself and one Boy in Vi&eals and Apparel, and in all other Necessaries, and in Proven&er for one Horse every Day; and also competent Sustenance for four Men of the Company of the said B. four Boys, four Horses, four Harriers, and four Sparrow-hawks every Year, at the Feasts of the Birth of our Lord, Easter, Pentecost, and All Saints, and for three Days after every of the said Feasts, in the Priory of C. &c. of which E. some time Prior of the Place aforesaid unjustly, &c. disseised F. Father of the aforesaid B. whose Heir he is, after the first Passage over of, &c.*

30 Ed. 1. Quod permittat 10. Br. Bataill 13. And in a Quod permittat habere chiminum, in the Nature of the Writ of Right, and to hold Suit, and dereign the Warrant, &c. the Defendant came and joined the Mife upon the meer Right, and was received.

4 Ed. 3. 48. Quod permittat 7. (b) And in a Quod permittat by a Parson, he counted of the Fee and Right, B and held Suit, and dereign, &c. and the Tenant came and gaged Bataill, &c. *Tempore Regis Ed. 1.*

And Tenant in Tail shall have a Quod permittat (c).

(a) See 17 Ed. 3. 67. 18 Ed. 3. 56, 57. 29 Ed. 3. 13. And Note that in this Writ Esplees are bound in the Multure, and not in the Toll, for that the Mill itself is not in Demand. See 18 Ed. 3. 57. *si ne defend Damages solement.*

(b) 30 Ed. 1. Quod permittat 10. (c) *Temp. Ed. 1. Quod permittat 9. 4 Ed. 3. pl. 39. 4 Ed. 3. 2. so shall a Tenant for Life. 4 Aff. 3.*

- C (a) And in a *Quod permittat* of a Common the Tenant alledged the Darrein Seisin in the Plaintiff; and it was adjudged a good Plea to abate the Writ. But there the Plaintiff counted of the Seisin of his Ancestor: For a Man shall have a *Quod permittat* of his own Seisin, as it frameth.
- D And a *Quod permittat* him to reduce a *Watercourse*, &c. which is misturned, will well lie.
- E And a Man shall have a *Quod permittat* against the Tenant of the Freehold 2H. 4. 13. ac. for an Act done, or a Disturbance done by a Stranger who was not Tenant of the Soil.
- F And the Procefs in a *Quod permittat* is Summons, Attachment and Distress: And if the Sheriff at the Summons return *Nihil*, the Plaintiff may pray a (b) *Capias* and have it, *Quod vide H. 39 Ed. 2.* 30 Ed. 3.
- G And the Form of a Count in a *Quod permittat* appears in the Book of Entries, fol. 80. on the first Side.
- H And if a Man build a House, or a Wall, or other Thing which is a Nuisance unto the Freehold of another, and dieth; he whose Nuisance it is shall have a Writ *Quod permittat* against his Heir that did the Nuisance, and the Writ is such:

The King to the Sherifff, &c. Command A. that justly, &c. he permit B. to pull down a certain House, or a certain Wall, or a certain Hedge, or a certain Mill or Ditch, which R. the Father, or other Ancestor of the aforesaid A. (c) whose Heir he is, unjustly and without Judgment built, to the Nuisance of the Free Tenement of C. the Father, or other Ancestor of the aforesaid B. whose Heir he is, in the same Town or in another Town after the first, &c. as it is said, and unless he will do it, &c. Or thus: That he permit B. to raise or lower a certain Pool in L. which the aforesaid A. unjustly lowered or raised, to the Nuisance of his Freehold, or of C. Father of the aforesaid B. &c. Or thus: That justly, &c. he permit B. to bring back again the Course of a certain Water in L. into its right and ancient Course, which C. the Mother of the aforesaid A. whose Heir he is, diverted, to the Nuisance, &c. Or thus: That justly, &c. he permit B. to open a certain Way in N. which C. Father of the aforesaid A. whose Heir he is, unjustly stopped up, &c.

(a) See a *Quod permittat* by Tenant in Tail in the *Debet & Solet*. 4 *Ed. 3.* 46. See 4 *Ed. 4.* 24. 3 *Ed. 3.* 25. and he shall declare on his Cafe. See 17 *Ed. 3.* 67. a *Quod permittat* by Tenant for Life; so 4 *Aff. 3.*

Of Common, &c. See a *Quod permittat* of Common of Pasture of his own Seisin, it shall bind Eplees, &c. and he tendered Suit, &c. And the Writ was in the *Debet & Solet*. Pole defended it, and joined the Issue or Issue, whether he had the better Right to hold in Severalty, (as he tendered it) or the Demandant to have the Common, &c. and Resolved, 1. That the Writ being in the *Debet & Solet*, and so a Writ of Possession, that the Issue should

not be joined. 2. That he could not have a Writ of his own Seisin in the *Debet*; but because the Parties were agreed, that the Issue should stand, the Writ was amended, and *Solet* struck out. 7. 16 *Ed. 3.*

(b) And after Appearance a *Distingas* in lieu of a *Petit Cape*, and therefore in a *Quod permittat* against two, they shall not search *per Distress*. 38 *Ed. 3.* 1. *contra* 14 *H. 4.* See 30 *Ed. 3.* 3. Note; the Party there came in by the *Capias*, and therefore was put to Answer.

(c) Or *Prædecessor*, and therefore if the Writ be general, *ad Nocendum liberi Tenementi sui*, it is a good Plea to say, that it was not done in his Time. 2 *H. 4.* 13.

Writ of Admeasurement of Pasture.

(a) And if a Man levy a Nufance unto the Freehold of another, and he to whom the Nufance is done maketh a Feoffment in Fee of the Land; and he who did the Nufance maketh a Feoffment of the Land in which the Nufance is; yet there is a Writ in the Register for the Feoffee of him to whom the Nufance was levied againſt the Feoffee of the other, to reform that Nufance, and the Writ is ſuch:

The King to the Sheriff, &c. Command C. that juſtly, &c. he permit B. to make broad a certain Way in N. which C. unjuſtly and without Judgment made narrow.

[125.]

Or Bailiw.

34 Ed. 1. Br.

Demand 43.

But this Writ is not given by the Statute, but may ſue, &c. by the Statute *West. 2. in Caſu conſimili, &c. c. 2, 4.*

And a *Quod permittat* of a Fair or Market ſhall be ſued in the Common A Pleas; and the Writ is ſuch:

The King to the Sheriff, &c. If A. ſhall make you ſecure, &c. then ſummon B. &c. that he be before our Juſtices, &c. to ſhew wherefore he hath ſet up a certain Market, or a certain Fair in I. to the Nufance of the free Market, or free Fair of him the ſaid A. in the ſame Town, or in another, after the firſt, &c. as it is ſaid. And have there the Summoners, &c.

And the like Writ for the Heir, where the Father doth levy the Market or Fair unto the Nufance of another Fair or Market; or for the Heir againſt him who levieth the Nufance, &c.

Writ of Admeasurement of Paſture.

THE Writ of Admeasurement of Paſture lieth betwixt Commoners who **B** have Common appendant to their Freeholds, if one of them furcharge the Common by putting in more Cattle in the Common, than he (b) ought to have Common for there, then that Commoner who is grieved ſhall have this Writ of Admeasurement of Paſture; and by this Suit all the Commoners ſhall be admeaſured, as well thoſe who have not furcharged the Common, as he who hath furcharged it, and he who bringeth the Action ſhall be alſo admeaſured.

8 H. 6. 26.

Ant. 125.

(a) So is *Penruddock's Caſe*, 5 Co. after a Requeſt to abate it. See 4 *Aff. 3. 4 Ed. 3. 36. 5 Ed. 3. 43.* The Father erects a Lime-kiln, which is a Nufance to B. and after diſcontinues the Uſe thereof, and then B. makes a Leaſe for Life; then the Father uſes the Lime-kiln and dies, and the Son does not abate it on Requeſt; a *Quod permittat* lies againſt him: But if the Father had levied it before the Leaſe, and had from Time to Time uſed it during the Leaſe, then it had been otherwiſe. *Note*; The Writ there was, *Quod Pater levavit ad nocumentum l'heri Ten'ti ſui.* The Defendant ſays, that he had a there, and uſed it before the Leaſe, &c.

It ſeems by the Statute, it ſhall be brought

againſt him that did the Tort, and the Tenants after the Alienation, *West. 2. cap. 24.* alſo it lies for a Suſſeſſor; and *Note*; in ſuch Caſe the Alienee may have Aid of him in the Reverſion or Remainder. *Quere 30 Ed. 3. 26. 4 Aff. 3. Reg. 194.*

(b) *Note*; If A. grants to B. Common for one thouſand Cattle in four Carves, and after grants to C. Common in the ſame Land for one hundred Beaſts; if by the ſecond Grant the Beaſts of the firſt Grantee cannot have ſufficient, the ſecond Grant is void againſt B. 18 H. 6. 30. *Note*; The Writ ſhall be brought againſt him only who furcharges; and in this Writ all ſhall be admeaſured, but not to their Prejudice, ſeeing they are not Parties to the Suit. 8 H. 6. 26.

(a) And

- C (a) And the Writ is *Vicontiel*, and shall be directed unto the Sheriff, and shall not be returnable; and the Form of the Writ is such: View in the
Action. 3 H.
6. 26. Vou-
cher; also
32 Ed. 3.
Voucher 194.
- The King to the Sheriff, &c. A. hath complained unto us, that B. and C. his Wife have unjustly surcharged his Common of Pasture in N. so that they have in it more Beasts and Cattle then they ought to have, and belongs to them to have; and therefore we command you, that justly and without delay you admeasure that Pasture, so that the aforesaid B. and C. may not have in it more Beasts and Cattle than they ought to have, and belongs to them to have, according to their Freehold which they have in the same Town, and that the aforesaid A. may have in that Pasture so many Beasts and Cattle as he ought to have, and belongs to him to have, that we may hear no more Clamour, &c.*
- D (b) And if the Tenant surcharge the Common with his Cattle, &c. the Lord shall not have the Writ of Admeasurement against the Tenant; but it seemeth the Lord may distrain the Surplusage of the Cattle Damage-feasant. And some say, that the Lord may have an Assise against the Tenant for the Surcharge, for that he is disturbed of the Profit of his Land. *Quere* of these Cases (c). Note, this
Writ is Vi-
contiel, and
the Statutes
are the Judges
by 7 Ed. 4. 23.
18 Ed. 3. Ad-
measurement
7. a notable
Case.
- But if the Lord surcharge the Common, the Tenant shall not have a Writ of Admeasurement against the Lord, but he shall have an Assise of Common against the Lord. 18 Ed. 2. 20.

(a) Admeasurement seems not to lie for Common appendant, or for Common by Specialty *sans* Number; but for him who has Common appurtenant, or a certain Common by Grant or Specialty if he surcharge. 22 *Aff.* 55.

(b) He cannot distrain the Surplus, where the Tenant has Common appendant, until it be admeasured, 10 *Ed.* 3. 51. 18 *Ed.* 3. *Admeasurement* 7. *per Curiam*, and yet he may approve it.

Note; The Lord may have an Admeasurement; but he himself shall not admeasure, *Temp. Ed.* 1. *Admeasurement* 12. See 6 *Co.* 54. *Corbet's Case*.

(c) See *Braff.* 229. That the Lord may have Admeasurement against his Tenant, or *e converso* for a Commoner against the Lord. *Temp. Ed.* 1. *Admeasurement* 16. Not against the Lord, because he cannot approve, but against the Tenant who is not Lord. *Ibid.* 11. 18 *Ed.* 3. 80. *Admeasurement* 7. If there are two Neighbours in a Vill, who intercommon each in the other's Land, Admeasurement does not lie between them; but if there are three Neighbours *A. B.* and *C.* and each intercommons in the other's Land; if one of them surcharge, the whole Admeasurement lies, for he had Common in the Lands of the three, &c. But where there are only two Neighbours *A.* and *B.* Admeasure-

ment does not lie, for there on a Surcharge, the Remedy is by Assise as Tertenant, and not as a Commoner; and a Tertenant cannot be admeasured; but where there are three Commoners or more who intercommon, each shall be admeasured in the Lands of the other, 18 *Ed.* 3. 43, 30. *Admeasurement*, when against Tenant of the Soil. *ibid.* 4. See 18 *Ed.* 3. *Admeasurement* 7. 19 *Ed.* 3. 30.

Note; The Writ of Admeasurement lies, tho' the Plaintiff has disseised the Tenant of the Common, if he continues seised of the Land to which, 8 *Ed.* 2. *Admeasurement* 14. And if the Defendant has Common appendant to his Freehold in three Villis, it may be admeasured for the Lands in one of the Villis. *Temp. Ed.* 1. *ibid.* 15. *Note* there, if one has Common appendant, and the Lord of the Soil grants him Common there for two hundred Beasts more, whereby the Common is surcharged; Admeasurement lies against him, and he shall admeasure within the Number granted him, and shall be put to vouch his Grantor to Warranty. *Temp. Ed.* 1. *ibid.* 16. and *Brief* 862. See 22 *Aff.* 65. *Admeasurement* 11.

Note; If the Lord leave sufficient Common, but the Way is not at so good Ease or Plight as it was before, Assise of Common lies, by *Stewart.* 11 *H.* 4. 26.

See 179. E.
126. D. E.

And so if the Lord do make Approvement of the Common unto himself, and do not leave sufficient Common to the Tenant, the Tenant shall have an Assise, and not a Writ of Admeasurement. And he who hath Common appurtenant certain, or Common by Grant certain, shall be admeasured; and a Tenant shall have an Admeasurement against him; but he who hath a Common appurtenant without Number, or Common in gross without Number, shall not be stinted, nor a Writ of Admeasurement doth not lie against him.

And in the Time of *Ed. 1.* it was agreed, That one Neighbour shall have E
a Writ of Admeasurement against another, where they intercommon by reason of Neighbourhood.

And if the Sheriff will not make the Admeasurement, he shall have an F
Alias and *Pluries*, *vel Causam nobis significes*. And if he do not return the *Pluries*, he shall have an Attachment against the Sheriff. And the Plea may be removed out of the County by a *Pone*, at the Suit of the Plaintiff, without shewing Cause in the Writ. But at the Suit of the Defendant he ought to shew Cause in the Writ; and the Writ of *Pone* is such:

Put, at the Petition of the Plaintiff before our Justices, &c. such a Day, the Plea which is in your County by our Writ between A. and B. of Admeasurement of Common of Pasture in N. and summon, &c. the aforesaid B. that he be then there to answer the aforesaid A. thereupon, &c. And have, &c. this Writ and the other Writ.

7 Ed. 4. 22.
Danby.

And upon this Writ of Admeasurement the Plaintiff shall enter his G
Plaint into the County before the Sheriff, as he shall do in a Replevin sued by Writ, and upon that the Sheriff shall make a Warrant against the Defendant, &c. and warn him to appear; and if he come and plead nothing in Bar, or grant it, then the Sheriff shall make the Admeasurement.

In a Writ of Admeasurement brought against one of Common in *D.* the Defendant said that he had Lands in *B.* and *S.* to which he had Common in the same Place, and yet the Writ good; for it is holden there, that the Ouster of the Surcharge shall not be in the same Place only, yet it seemeth all the Common shall be admeasured. *Temp. Ed. 1. Admeasf. 15.*

But if the Defendant shew Cause unto the Sheriff wherefore the Admeasurement should not be made, then the Sheriff ought not to make Admeasurement upon this Writ; but the Plaintiff ought to remove the Plea by a *Pone* into the Common Pleas, by which *Pone* the Defendant shall have Day for to appear, &c. And if he appear not, then shall issue a *Disfringas* directed to the Sheriff to distrain the Party, and such Day shall be given by that Writ, that two Counties may be kept between the Date of the Writ and the Return, and in the Counties Proclamation shall be made, that he come and shew Cause why the Admeasurement should not be made. And if he do not come at the Return of the *Disfringas*, then a Writ shall be awarded unto the Sheriff, to make the Admeasurement by his Default; and that is given by the Statute of *West. 2. cap. 8.* and the Writ is,

*The King to the Sheriff, &c. Whereas A. hath lately complained to us, that B. H
and C. have surcharged his Common of Pasture in N. so that they have more
Beasts and Cattle in it than they ought to have, and belongs to them to have:*

Wherefore

Wherefore we commanded you, that justly and without Delay you should cause that Pasture to be admeasured, so that the aforesaid B. and C. may not have in it more Beasts and Cattle than they ought to have and belongs to them to have, according to their Freehold in the same Town; and that the aforesaid A. may have in that Pasture so many Beasts and Cattle as he ought to have and belongs to him to have, &c. that we might hear no more Clamour, &c. and you have done (a) nothing thereupon, as we have received Information from him the said A. And whereas we have ordained in our Writ of Admeasurement of Pasture, that after the Grand Distress Days shall be given, within which two Counties may be holden, at which Proclamation shall be made, that the Defendant shall come in to answer the Plaintiff; at which Day, if he shall not come, Admeasurement may be made by Default: [126.] We command you, as we have heretofore commanded you, that justly and without Delay you cause the aforesaid Pasture to be admeasured, according to the Tenor of our other Writ thereof to you directed, and according to the Form of our Statute thereof provided and set forth, that we may not be again solicited upon this Matter by the aforesaid A. Witness, &c.

A And when the Plea is removed by *Pone* in the Common Pleas, and the Plaintiff appears and the Defendant, then the Plaintiff shall count against the Defendant; and see the Form of the Count in the Book of *Entries*, fol. 128.

B And if the Defendant do grant to have the Admeasurement, a Writ shall issue to the Sheriff to make Admeasurement, which shall be such:

The King to the Sheriff, &c. We command you, that having taken with you twelve, &c. by whom, &c. who neither, &c. you go in your own Person to admeasure the Common of Pasture, and by their Oath you cause the Common of Pasture aforesaid to be admeasured, so that the aforesaid S. and D. may not have more, &c. and to them belongeth not to have, according to their Freehold which they have in that Town: And that the aforesaid R. may have in that Pasture so many Beasts and Cattle as he ought to have and belongs to him to have, according to his Freehold which he hath in that Town, and the Admeasurement, which, &c. you make known before our Justices under your Seal and the Seals of these, &c.

C After the *Pone* returned to remove the Plea out of the County, if the Defendant make Default at the Day of the Return of the Writ, then shall issue a Writ to the Sheriff to distrain the Defendant, and in the Writ shall be contained, that he make open Proclamation in two Counties, &c. that the Defendant come into the Common Pleas at the Day of the Return of the *Distringas*, to answer to the Plaintiff, &c. And if the Sheriff return the Writ served, and the Defendant doth not come, then shall issue a Writ to the Sheriff to make the Admeasurement.

D And it appeareth by the Book of *Entries*, fol. 123. That a Writ of Ad- See 125 D. measurement doth not lie against the Lord of the Soil (b).

(a) Note; Though *nihil* be returned to each of the three Writs, yet by the Statute they shall proceed to the Admeasurement.

(b) See 2 H. 6. 41. And there some hold that the Defendant shall have Admeasurement. See 8 H. 6. 27. 9 H. 6. 41. 2 Inst. 83.

18 Ed. 3. 20. And if a Man be once admeasured by a Writ of Admeasurement directed E
 unto the Sheriff by the Sheriff, &c. and afterwards he surcharge the Common
 again, then the Party who sued the first Writ shall have a Writ to the Sheriff,
 and there called a Writ *De secunda Superoneratione*; and the Writ is such:
 lieth not
 against the Feoffee of the Lord of Part of the Demesnes, so that the Feoffee is in the same Degree as the Lord
 himself. 8 Ed. 2. Admeasurement 14. In Admeasurement of Pasture the Defendant said, that the Demandant,
 pendent the Writ, had ejected him of the Common, and no Plea; for notwithstanding that, he had not the Com-
 mon, he held the Land for which the Common is surcharged.

The King to the Sheriff, &c. A. hath shewed unto us, that whereas he lately brought to you our Writ of Admeasurement of his Common of Pasture in N. which B. unjustly surcharged; and you did admeasure that Pasture by our Command, as the Custom is in our Realm, &c. he the said B. hath unjustly surcharged that Pasture after the aforesaid Admeasurement, to the great Expence and Grievance of him the said A. and contrary to the Form of the Statute hereupon provided: And because we will relieve the said A. as we are bound to do, according to the Form of the same Statute, we command you, that you go in your own Person to that Pasture, and diligently inquire, by the Oath of honest and lawful Men of your Bailiwick, by whom the Truth of the Matter may be better known, touching the second Surcharge of the same Pasture; and if you shall find by that Inquest, that the Pasture was again unjustly surcharged by the aforesaid B. after the Admeasurement, then that you answer to us at the Exchequer for the Beasts beyond the due Number put into the Pasture after the first Admeasurement, or for the Price of them, and remove the Surcharge aforesaid.

And it appeareth by this Writ, that a Man shall have a Writ *De Superone-* F
ratione upon the first Writ of Admeasurement of Pasture, which is *Vicontiel*, and directed to the Sheriff, if the Sheriff make Admeasurement upon that Writ, and afterwards the Defendant surcharge the Common again, as well as upon a Writ of Admeasurement awarded out of the Common Pleas upon a Judgment there given, &c. But upon the Writ of Admeasurement awarded to the Sheriff, by which he maketh Admeasurement, if the Defendant surcharge the Common after, the Writ of *secund' Superoneratione* shall be awarded out of the Chancery: But upon a Judgment given in the Common Pleas of Admeasurement, &c. if the Defendant surcharge the Common, the Writ of *secunda Superoneratione* shall be awarded out of the Common Pleas; and the Form of the Count in a Writ of Admeasurement is such:

*And whereupon the aforesaid Plaintiff complains, that whereas he is seised of G
 one Messuage with the Appurtenances in S. to which he the said Plaintiff hath and ought to have Common of Pasture, with four Horses, in one hundred Acres of Pasture called B. every Year throughout the whole Year, appurtenant. And the aforesaid Defendant is seised in his Demesne as of Fee of four Yard-lands with the Appurtenances in the same Town, to which the said Defendant hath and ought to have Common of Pasture, with one hundred Horses and twenty Oxen, &c. every Year throughout the whole Year, appurtenant; the aforesaid Defendant hath unjustly surcharged the Common of Pasture aforesaid called B. so that he hath more Beasts and Cattle in it than he ought to have, and to him belongs to have; whereupon he saith that he is injured, and hath sustained Damage to twenty Pounds, and prays Admeasurement.*

And

H And by the Writ of *Secunda Superoneratione* the Plaintiff shall recover his Damages against him that was Defendant in the first Writ, and also he shall forfeit unto the King the Cattle which he put in over the due Number after the Admeasurement made. And all this is by the Statute of *West. 2. Vide ant. 125.*

I (a) And note, That by the Writ of Admeasurement all the Commoners shall be admeasured as well as those who were Parties to the Writ. But yet if any of those who are Commoners, which were not Parties to the Writs of Admeasurement, &c. do surcharge the Common after Admeasurement, they shall not forfeit their Cattle, nor the Value of them that were in the Pasture above the due Number, because they were not Parties to the first Writ, nor the Party shall recover Damages against them for this Surcharge in this Writ. For the Writ of *Secunda Superoneratione* doth not lie but only against him, [127.] against whom the first Writ was sued forth.

Writ de Reparatione facienda.

A THE Writ *de Reparatione facienda* lieth in divers Cafes; one is, where there are three Tenants in Common or Joint, or *pro indiviso* of a Mill or a House, &c. which falls to Decay, and one will repair, but the other will not repair the same, he shall have this Writ against them; and the Writ is such: 11 Co. 82. b.

B *The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, &c. B. and C. that they be, &c. to shew wherefore whereas they the said A. B. and C. hold a certain Mill in N. undivided, and receive the Issues thereof coming by equal Portion, and are bound to repair and keep up the same Mill, and they the said B. and C. although they receive their Share of those Profits happening, yet they refuse to contribute to the Reparation and Support of the said Mill, to the great Damage and Grievance of him the said A. as it said: And have there the Summoners, &c.*

C And so if a Man have a House adjoining to my House, and he suffer his House to lie in Decay, to the Annoyance of my House; I shall have a Writ against him to repair his House in such Form:

Command A. that, &c. he cause to be repaired his certain House in N. which threatens Destruction, to the Nuisance of the Freehold of B. in the same Town, which he ought and hath been used to repair, as it is said, &c. and unless, &c. 11 H. 4. 85.

D And so if I have a Passage over a Bridge, and another ought to repair the Bridge, and he suffer the same to fall to Decay, I shall have a Writ against him in this Form:

The King, &c. Command A. that, &c. be together with B. and C. his Partners, cause to be repaired the Bridge or a certain Pool in N. which he ought to repair with them, as it is said, and unless, &c. or thus, a certain Bridge, or a

(a) But Note; The Judgment on the Admeasurement, is only to extend between the Parties: a new Admeasurement. 18 Ed. 3. *Admeasurement* 7.
for if any other be aggrieved, he ought to bring

Writ de Reparatione facienda.

certain Pool which is fallen down, or broken down to the Nuisance of (a) the Freehold of B. in the same Town, which he ought and hath been used to do, &c. as it is said; or thus, to cause to be repaired with B. and C. his Partners; the Ditches and Walls in N. which are fallen down, to the Nuisance of the Freehold of B. and C. which he ought and hath used to repair with them, as it is said, &c.

And if any Bridge, Wall or Sewer be broken, unto the Annoyance of the Country, upon a Surmise made by any Person thereof in Chancery, that certain Persons ought to repair the same, he shall have a Writ unto the Sheriff to distrain such Persons to repair the same; but it appeareth (b) by the Register, that the King shall send his Commission to the Sheriff to enquire who ought to make such Bridge, and that he distrain them to make the same, and repair it. But by the Statute of 28 *Ed. 3. cap. 9.* (c) a Commission shall not be made unto the Sheriff to take an Indictment; and the King may send unto the Sheriff to distrain those Persons who ought to make or repair such a Way, or Causeway, or Pavement, and upon it an *Alias* and *Pluries* if it be not done, and an Attachment upon the same; and if the Bridge or Way be in the Confines of the County, he shall have several Writs unto every Sheriff to distrain them in their Bailiwicks, that they, with the Men in other Counties, shall make and repair the Bridges and Ways, &c.

And there is another Writ in the Register in the Title of the Writ of *Ex gravi querela*, thus:

The King to the Mayor and Sheriff of A. greeting: It is shewed unto us on the Behalf of W. that whereas he hath a certain Cellar with the Appurtenances in the said Town of A. and I. hath a certain Cellar with the Appurtenances in the same Town, over the Cellar aforesaid, thrown and broken down to the Nuisance of the Cellar of him the said W. and by the aforesaid I. according to the Custom of the said Town ought to be repaired; nevertbeles he the said I. refuses to repiar that Cellar, as it is said, to the great Damage of him the said W. and contrary to the Custom aforesaid, and because we will not that he the said W. be injured in this Matter, we command you, that having called before you the Parties aforesaid, and having heard their Reasons severally thereupon, you cause due and speedy Complement of Justice to be done to him the said W. in the Premisses, as of Right and according to the Custom, &c.

And thereupon the Mayor and Sheriffs, or Bailiffs shall proceed, and award Process against the Parties; and if they will not do it, he may have an *Alias* and *Pluries*, and Attachment against the Mayor and Bailiffs.

(a) And Note; In this Writ the Party recovers his Damages, and it shall be awarded that the Defendant repair, and that he be distrained to do it. 18 *Ed. 3. 23.* So in this Writ he shall have the View; *contra* if it be but an Action on the Case for not repairing, for there he shall recover but Damages. 7 *H. 4. 8.*

(b) On a Commission an Inquest was found (and returned into Chancery, and sent thence

into B. C.) that the Abbot of *W.* and his Predecessors, had repaired the Bridge of *S.*

(c) Note; It seems such Commissions were principally to redress Nuisances which were within the Precincts of Franchises, or Leets of other Lords, and so not punishable in the Sheriff's Turn. 29 *Ed. 3. 21.*

Writ de Curia claudenda, and for repairing of Hedges.

G THE Writ of *Curia claudenda* may be sued before the Sheriff in the (a) County, and then the Writ is such:

The King to the Sheriff, &c. That you Justice A. that justly, &c. be inclose his Land in N. which is open, to the Nuisance of the Freehold of B. in the same Town, (or in another Town) which he ought and hath used to inclose, as it is said, and which he can reasonably shew he ought to inclose it, that we may hear no more Clamour for want of Justice, &c.

H And this Writ lieth where one ought for to inclose his Land from his Neighbour, and will not do it, he shall have this Writ; and the Writ may be sued in the Common Pleas, and then the Writ is such (b):

I *The King, &c. Command A. that justly, &c. be inclose his Land in N. which is open, to the Nuisance of the Freehold of B. &c. which he ought and hath used to inclose, and unless, &c. (c)*

Writ before he be damnified. Quia timet. 27 H. 6. Curia claud'. A Nontenure is a good Plea in the Writ.

A And this Writ shall be removed out of the County at the Suit of the Plaintiff without Cause, and at the Suit of the Defendant he ought to shew Cause in the Writ, and in the End of the Writ shall be this Clause: *Let Execution of this Writ be done, if the Cause be true, otherwise not.* [128.]

B And the *Curia claudenda* doth not lie but against him who (d) hath a Close adjoining unto the Plaintiff's Land, and it doth not lie but for him who hath a Freehold in the Land, for Tenant for Years shall not have this Writ, and the View lieth in this Writ (e).

C But it seemeth that if a Man have Common in a great Waste to him and his Heirs, or for Life, and he who hath the Land adjoining unto the Waste and Soil, and who ought to enclose, enter into the Waste, and will not make this Enclosure; yet the Commoner shall not have this Action for the Damages which he sustaineth, &c. although the Commoner may distrain the Cattle Damage-feasant in the Land which is his Common, for the Writ doth suppose,

(a) Note; A *Curia claudenda* shall be brought only in the County where the Lands which ought to be inclosed lie, *per Skipw.* But Cause shall be brought in that County which is damaged by the Noninclosure; and if Issue be on the Prescription, the Venue shall come *de utroq' Comitatu*, *per Skipw.* 11 R. 2. *Action sur le Cafe* 36, &c. and see there Cause for an Inclosure; and note, the Writ was *ad Novamentum*, 20 Ed. 3. 20.

(b) See 2 R. 2. *Action sur le Cafe* 36.

(c) See 22 Ed. 4. *Curia claudenda* 2. 1 H. 6. 33. 7 H. 6. pl. 4. 17 H. 6. pl. 4.

(d) Note; The Count supposes that the Lands of the Plaintiff are contiguously adjacent to the Close of the Defendant, and this is issuable, for none shall have this Writ, but he who has the Land next adjoining, by *Newton*, 22 H. 6. 8, and 9. and *Moyle contr' Priot.* See 13 H. 7. *Kelw.* 130. 7 H. 6. *Cur' claud'* 4. 13 R. 2. pl. 3. 17 H. 6. pl. 4.

(e) Both for the one and the other's Lands, &c. 29 Ed. 3. 21.

Ad Nocumentum liberi tenet' of the Plaintiff, which proveth that the Plaintiff ought to have the Soil adjoining, if he have the Action (a).

And

(a) *Note*; If *A.* be bound to inclose against *B.* and *B.* against *C.* and Beasts escape out of the Land of *C.* into the Land of *B.* and thence into the Land of *A.* *A.* shall not have Trespass against *C.* But if *A.* be bound to inclose against *B.* and the Beasts of *B.* escape into the Lands of *A.* and thence into the Land of one *D.* a Stranger, there *D.* shall have Trespass, and *B.* be put to a *Curia claudenda* against *A.* and so the Books 10 *Ed.* 4. 7. and 36 *H.* 6. *Barr.* 68. are to be reconciled: But 'it is otherwise if Beasts escape in View of the Owner, by Default of Inclosure, as out of a Highway, &c. and fresh Suit be shewn in Justification; but if it does not appear they were in View of the Owner, fresh Suit shall not be pleaded in Bar, except the Plaintiff alledges Notice. 15 *H.* 7. 17. 22 *Ed.* 4. 8, 49. 10 *Ed.* 4. 8.

Note as to Inclosure.

1. If Beasts escape into your Land for Default of Inclosure, where you are bound to inclose, you shall have no Advantage thereof on the general Issue, but ought to plead in special. 18 *H.* 8. 6.

2. See the Form of the Plea; Ought not to have his Action against him the said *G.* because he says that long before, &c. he was seised of a certain Close in *S.* aforesaid called *D.* contiguously adjoining to the aforesaid Close of the said *A.* called *C.* in which the Trespass aforesaid is supposed to be done, in his Demesne as of Fee, and that the aforesaid *A.* and all those whose Estate he hath in the Close called *C.* aforesaid, from Time whereof the Memory of Man is not to the contrary, have been used to enclose the said Close, and the Hedges of the same Close towards the Close of him the said *G.* sufficiently to repair and amend, and that before the Time when, &c. he the said *G.* put his Beasts into his said Close to be depastured, and because the Hedges between the Close of the aforesaid *A.* towards the Close of him the aforesaid *G.* were broken and not repaired, the aforesaid Beasts from the same Close of the said *G.* for want of sufficient Reparation of the Hedges of the Close of him the said *A.* at the Time aforesaid entered, &c. And this, &c. *Rast. Entr.* 621. And see the same Form of Pleading, in *Sagewell* and *Millard* for a Trespass in the Park of *Cheenye*, where the Plaintiff replied, That he is seised of a Piece of Land of seven Feet in *Longitudine*

(*Latitud'*) & 20 verge in *Latitudine* (*Longitud'*) lying between the Lands of the said *G.* and those of *C.* and that the Beasts on the Day of the Trespass, came into his said Piece of Land, and there broke the said Close, &c. *absque hoc*, that the Defendant's Close is contiguously adjacent to the Close of *C.* modo & forma. And the other Party said, *it was*, &c. and it was found for the Plaintiff, and twenty Pounds Damages for the Piece of Land, and forty Shillings for the Close; and it was adjudged that the Plaintiff should recover.

Note; It is a good Issue to traverse the Prescription; for if the Plaintiff be not bound to inclose (though he has voluntarily inclosed) it will be to no Purpose; for if *A.* and *B.* have Lands adjoining, where there is no Inclosure, the one shall have Trespass against the other, on an Escape of their Beasts respectively, *Dyer* 372. *Rast. Entr.* 621. 20 *Ed.* 4. 10. although wild Dogs, &c. drive the Cattle of the one into the Lands of the other; and 22 *H.* 6. 9. and the Writ shall be *Quare clausum fregit*, for it is a Close in Law.

2. If the Defendant pleads that he is seised in his Demesne, as of Fee, of the Close of *D.* the Plaintiff may reply, that *J. S.* was seised, *absque hoc*, that the Defendant was seised in his Demesne as of Fee, and so cause the precise Estate to come in Question: But if the Defendant had pleaded generally, that he was seised of the Close adjoining, or that the Close adjoining was his Freehold; there the Plaintiff shall reply, that he had nothing in the Close adjoining at the Time, &c. and this shall make the Issue. *Dyer* 365. *Sir Fra. Leak's* Case.

3. That *ex consequenti* it follows, none can have Advantage of this Justification, but he who claims an Interest in the Land adjoining to *D.* viz. a Common Path, Highway, Licence, Lease, &c. and therefore if *A.* be bound to inclose with *B.* who has a Close adjoining, and the Beasts of *C.* who has another Close adjoining, escape into the Land of *B.* and thence into the Land of *A.* *A.* shall have Trespass for this; and so held by *Newton*, 21 *H.* 6. 53. 22 *H.* 6. 9. for they were Trespassers to *B.* otherwise if *C.* had had Common, or a Way in the Land of *B.* or (as it seems to me) if *B.* had been bound to inclose against *C.* 22 *Ed.* 4. *Curia claudenda* 2. adjudged.

4. Hence it follows, that the Issue is well-joined in the principal Case; for the Defendant had

D And the Proceſs in this Writ is Summons, Attachment and Diſtreſs, and if he do appear and afterwards make Default, he ſhall have a *Diſtringas* in the Place of a *Petit Cape*, &c. And if he make Default at the Day of the Return of that Writ, he ſhall have a Writ to enquire of Damages, and alſo a Writ to diſtrain him to make the Reparations, &c. And in this Writ in his Count he ought to ſhew the Certainty of the Land which the Plaintiff hath adjoining unto the Defendant, and the Certainty of the Land which the Defendant hath there adjoining which he ought to enſe. And to alledge a Preſcription of the Encloſurè, &c. as appeareth in the Count of the Book of Entries, fol. 32. So it is holden 22 H. 6. for if it be by Indenture or Compoſition, then he ſhall be put to his Writ of Covenant.

22 Ed. 4.
liſſe 127
10 Ed. 4. 7.
13 R. 2.
Cur' claud' 3
29 H. 6.
38 Dyer.

Writ of Quo Jure.

F THE Writ of *Quo Jure*, where a Man hath Lands in Fee, and another claimeth Common in that Land, he who owneth that Land ſhall have this Writ againſt that Commoner who claimeth the Common, and the Writ is ſuch:

7 H. 4. 12.
It is a good
Plea to ſay,

That he hath nothing in the Lands in which he claimeth Common.

G *The King to the Sheriff, &c. If A. ſhall make you ſecure, &c. then ſummon, &c. B. that he be, &c. to ſhew by what Right he demands Common of Paſture in the Land of him the ſaid A. as the ſaid A. hath no Common in the Land of him the ſaid B. (a) neither doth the ſaid B. Service to him for which he ought to have Common in the Land of him the ſaid A. as it is ſaid: And have there, &c.*

H And this Writ lieth for the Lord of a Town, or of a Waſte, or for any other Tenant who claimeth Common in his Land; although he be not Lord of the Waſte, nor the Town.

I And this Writ is a Writ of Right in its Nature, for when the Plaintiff hath declared in this Writ, the Tenant ſhall make Defence and ſet out his Title to the Common, (b) and alledge Seiſin thereof, and the Eſplees, *And that ſuch is his Right he offers, &c.* as the Demandant ſhall do in a Writ of Right; and then the Plaintiff in the *Quo Jure* ſhall make Defence, and deny the Seiſin alledged by the Defendant, and join the Miſe upon the meer Right, or by Battail, and ſee the Count and the Form of Pleading in a *Quo jure, Lib. Ent. 96 and 80.*

had not the Cloſe *immediate*; ſo his Beaſts did Wrong, when they entred into the Piece of Land out of the Park; and therefore, if *A.* be bound to enſe againſt *B.* who has twenty Acres adjoining, and *A.* purchaſes one Acre contiguouſly adjacent to the Incloſure, *A.* ſhall not be compelled to enſe. If *A.* has a Cloſe which he uſed to enſe, and afterwards has an Acre of Land contiguouſly adjoining, and then lets out his Incloſure, with Limits, &c. Yet

he that has the Land adjoining, ſhall not juſtify for Default of Incloſure. Theſe Points are reſolved, 21 H. 6. 3. 22 H. 6. 8.

(a) Yet Note; A Lord may have Common appendant to his Demefnes in the Lands of his Tenant. 18 Ed. 3. 43.

(b) So that herein the Defendant is Actor or Proſecutor, and therefore it is held by ſome, that he ſhall not have Aid on his Title 9 H. 6. 56.

Writ de Rationabilibus Divifis.

And in a *Quo Jure* brought by two, Summons and Severance lieth, and K the Nonfuit of the one shall not be the Nonfuit of the other. And this *Quo Jure* lieth againſt ſeveral Tenants, as it appeareth, *H. 24 H. 3.* But in that Caſe they ſhall, it ſeemeth, make ſeveral Defences, and make ſeveral Titles, and join the *Miſe* ſeverally. And the View ſhall be granted in this Writ. And the Proceſs in this Writ is Summons, Attachment and Diſtreſs, and after Appearance if the Defendant make Default, a grand Diſtreſs ſhall iſſue L. out in the Place of *Petit Cape, &c.*

Pol. 133.

Writ de Rationabilibus Divifis.

THE Writ *de Rationabilibus Divifis*, is in its Nature a Writ of Right; M and lieth properly where two Men have Lands in divers Towns or Hamlets, ſo that the one is ſeiſed of the Land in one Town or Hamlet, and the other of the Land in the other Town or Hamlet by himſelf; and they do not know the Bounds of the Towns or Hamlets, which is the Land of one, and which is the Land of the other; then to ſet the Bounds in certain, this Writ lieth for the one againſt the other; and the Form of the Writ is ſuch:

The King to the Sheriff, &c. We command you, that juſtly and without Delay, N you cauſe reaſonable Bounds to be ſet between the Land of A. of B. in C. and the Land of D. of E. in F. as there ought and have been uſed to be, whereupon be the ſaid A. complains, that the aforeſaid D. draws more thereof to his Fee than belongs to him to have, &c. Witneſs, &c.

12 Ed. 3.
24 Ed. 3.

And this Writ lieth for Tenant in Fee-ſimple, and againſt Tenant for Life, O and in this Writ the Tenant for Life ſhall have Aid of him in the Reverſion, and they may join the *Miſe* in this Writ, and it ſhall be tried by the Grand Aſſiſe, as other Writs of Right ſhall be.

And this Writ is *Vicontiel*, and may be determined by the Sheriff: For the P Plaintiff in this Writ ſhall make his Plaint before the Sheriff in Nature of a Count, and upon the ſame the Sheriff ſhall make a Precept to warn the Defendant, and when he cometh the Plaintiff ſhall count, and the Defendant ſhall answer the ſame in the Count, *&c.* and if he deny it, then the Sheriff ſhall make the Diviſion and Partition of the Land between them by certain Metes and Bounds.

See 129 B.

But if the Defendant will plead, and join the *Miſe* upon the mere Right, Q and put himſelf upon the Grand Aſſiſe, then the Plaintiff ought to remove the ſame by a *Pone*, without Cauſe, and the Defendant may remove it with Cauſe, as it is ſaid in other Writs. And the Count in this Writ is in this Form:

And the ſame A. now comes and ſays, that whereas reaſonable and right Bounds R ought to be between the Land of the aforeſaid N. &c. in S. and the Land of him the ſaid A. in B. the Bounds aforeſaid beginning towards the North in a certain Place called K. and ſo directly towards the South in length by L. unto E. beyond which Bounds the aforeſaid N. &c. ought to have nothing towards the Weſt, he the ſaid N. &c. beyond the Bounds aforeſaid, hath drawn to his Fee in S. of the Land of him the ſaid A. three hundred Acres of Moor and Paſture, &c. whereof

be the said A. says that one W. his late Father, was seised of his Demesne as of Fee, by divers Metes and Bounds, in Time of Peace in the Time of, &c. by taking the Profits thereof to the Value, &c. and that such is his Right, he offers, &c. [129.]
 And the Tenant may join the Mife by Battail or by Grand Assise, &c.

- A And divers Tenants in Common of a Town or Hamlet may have this Action against him who is Tenant of another Town adjoining, and they shall count one Count, and shall make their several Titles in that Count, and shall alledge the Esplees severally in the same Count. Which see in the Book of Entries, fol. 167.
- B And the Defendant shall make his Defence several against every one of them, or may wage Battail, or join the Mife at his Pleasure, and then the Plaintiffs shall reply thereunto and recite anew their Count, and alledge the Esplees, as before, and then join to the Mife with the Tenant upon the mere Right, or
- C by Battail at the Pleasure of the Tenant. And if they do join the Mife in the County before the Sheriff, by Battail, it shall be determined there, but not by the Grand Assise, &c. And it seemeth, that Tenant in Tail, nor a Parson of a Church, nor Tenant for Life shall not have this Writ, for he ought to have an Estate in Fee who maintaineth this Writ, and Summons and Severance
- D lieth in this Writ, and the View shall be granted in this Writ. And Jointenancy or Coparcenary is a good Plea in this Writ, and the Writ may be
- E brought against several Tenants, who have Tenements in Severalty or in common in the other Town. See 128. Q.

Writ Ex parte talis.

- F THE Writ of *Ex parte talis* lieth where Auditors are assigned unto a Bailiff or Receiver to account, and the Auditors will not allow unto the Bailiff or Receiver his (a) reasonable Allowances, which they ought to do, but commit him to Prison; he who is so imprisoned shall have this Writ *Ex parte talis*, &c. But if a Man brings a Writ of Account, and Auditors are assigned unto him who is Bailiff or Receiver, to take his Account, and they will not allow him his Allowances which they ought to do, &c. he shall not have this Writ of *Ex parte talis*, nor any other Remedy in that Case, for he may shew the same to the Justices, and they shall relieve him.
- in the Writ hath paid the Money by the Commandment of the Owner, or such special Matter ting or Tally of the same. Note 13 R. 2. Fitz. Account 51. upon this Writ of Ex parte talis, the Barons of the Exchequer use to allow an Averm. that the Plaintiff without Wri-

- G And if a Plea of Account be sued in London against a Receiver, &c. or in other Court of Record, and the Party appear, and Auditors are assigned him by the Court, and they will not allow unto him such Allowances which he thinketh they ought to do; he shall have a Writ of *Ex parte talis*; and the Writ is such:

(a) Note; Payment to the Plaintiff, or to another by his Command, ought to be allowed, although the Accountant has no Tally or Writing of the same. 13 R. 2. Account 51. *Id. contr.* 6 R. 2. *ibid.* 47. *per Belkn.*

Writ Ex parte talis.

The King, &c. It is shewed unto us, on the Behalf of A. (taken and detained in our Prison of Lincoln for Arrears of his Account, in which B. affirms him to be bound to him for the Time wherein he was his Bailiff in N.) that the Auditors of the said Account deputed by him the said B. for this Purpose, have unduly aggrieved him the said A. upon the same Account, by charging him with Receipts which he hath not received, or by not allowing to him Expences and Discharges reasonable, to the great Damage and Grievance of him the said A. And because we will not that the said A. be injured in this Behalf, we command you, that if the aforesaid A. by the Testimony of the Auditors of the Accounts, shall be delivered, and shall find you sufficient Bail to have him before our Treasurer and Barons in our Exchequer to render to the aforesaid B. his Account, according to the Form of the Statute thereof provided by the Common Council of our Realm, then that you cause him the said A. to be delivered by the Bail aforesaid out of the Prison aforesaid, if he be detained in the same on that Occasion, and no other, and give Notice to the aforesaid B. that he be then there with the Rolls and Tallies, by which the aforesaid A. his Account before rendered, to do and receive in the Premises what of Right and according to the Form of the Statute aforesaid ought to be thereupon done: And have there the Names of those Bail and this Writ. Witnesses, &c. Vide Stat. inde Westm. 2. cap. 11.

And this Writ shall be returnable before the Treasurer and Barons of the H Exchequer at a certain Day, as it appeareth by the Writ.

And if a Man have Auditors assigned him in London by the Party who taketh the Account, and will not allow his Tallies or other Things to be allowed, but commit him to Prison, and because he is a Stranger in the City, he cannot find Sureties to bail him to sue his Writ of *Ex parte talis*, &c. Then he may send unto the Chancellor, and surmise in the Chancery, and put in Sureties before the King there, and thereupon he shall have a Writ unto the Sheriff of London out of the Chancery, rehearsing the Matter, and how that he hath found Sureties there, according to the Statute, commanding the Sheriff to deliver him out of Prison and the Writ shall be such:

The King to the Sheriff, &c. It is shewed unto us on the Behalf of A. (as above, until) to the great Damage and Grievance of him the said A. And because the same A. is a Foreigner in our City of London and unknown, wherefore he cannot find Persons of the said City to be bail, to have him before our Treasurer and Barons of the Exchequer to render his Account aforesaid, and farther to do and receive that which our Court shall consider in the Premises; and you have refused to admit other Persons Bail for him the said A. than of the City, and the same A. hath found sufficient Bail before us in our Chancery, to wit, C. D. and E. of the County of York, who have become Bail to have him before our Treasurer (or his Deputy) and Barons of the Exchequer in fifteen Days of Easter next coming, to review there his said Account, and to stand to the Right in the Premises, according to the Form of the Statute thereupon provided by the Common Council of our Realm; We command you in the mean time, that you cause him the said A. to be delivered by the Bail aforesaid out of the Prison aforesaid, if he be detained in the same on that Occasion, and no other: And give Notice to the said B. that he be then there with the Rolls and Tallies by which the aforesaid A. his Account before rendered as aforesaid, and to do and receive what shall be just and cononant to Reason: And have there this Writ, &c.

And

A And if he do remain in Prison, he may sue the *Ex parte talis* returnable before the Treasurer and Barons of the Exchequer, and thereupon he may have another Writ out of Chancery directed unto the Treasurer and Barons of the Exchequer, that they take Sureties of him who is in Prison according unto the Form of the Statute; and that they deliver him out of Prison, and shall have another Writ unto the Gaoler, that he send his Body before the Treasurer and Barons of the Exchequer, and that he deliver the Body when the Treasurer and Barons send him a Writ so to do, &c. which Writ appeareth in the Register.

B (a) And if a Man be committed to Prison by Auditors for Arrearages of his Account, and afterwards escape out of Prison, the Gaoler shall satisfy the Party at whose Suit he was committed, and the Gaoler shall have a special Action upon the Case upon the Prisoner to answer the Escape and the Damages which the Gaoler hath sustained, which Writ is among the Writs of *Ex parte talis* in the Register; but it seems reasonable that the Gaoler may take the Party again, and so is the Opinion of some Books.

13 H. 7. 2.
V. 6 H. 7. 11.
& 12.
10 H. 7. 25.
13 Ed. 4. 9.
14 H. 7.
Stamf. 33.

Writ of Execution upon a Statute-merchant.

C A Writ of Execution upon a Statute-merchant lieth in Case, where a Man is bounden in a Statute-merchant before any Mayor or Bailiff of a Corporate Town, who have Power to take such Bonds or Recognizances, to pay a certain Sum of Money at a Day, at which Day he doth not pay the same, then he to whom the Obligation or Recognizance is made, may come before the Mayor, or him before whom the Bond or Recognizance was taken, and pray him to certify the same into the Chancery under his Seal, according unto the Statute of *Aetion Burnel*; and if he will not certify the same as he ought to do, then the Recognizee may have such Writ directed unto the Mayor:

But if a Statute merchant be acknowledged to one who is absent, it shall not bind the Commission, if it be not delivered to the Commisee, as it seemeth by 20 Ed. 3. Fitz. Account 79.

The King to his beloved the Mayor of Lincoln, and to T. Clerk deputed to take Recognizance of Debts at L. greeting: It is shewed unto us on the Behalf of I. that whereas R. in the tenth Year of our Reign, before W. late Mayor of the City of Lincoln, and H. Clerk deputed to take Recognizances in the same City, acknowledged himself to owe to the aforesaid I. twenty-four Pounds, according to the Statute for Merchants heretofore set forth at Aetion Burnel, to be paid at certain Times; and although the Times of Payment are long since past, and he the said I. hath often requested you, that you would certify us in our Chancery of the Recognizance aforesaid, according to the Form of the Statute aforesaid, and yet you have hitherto deferred, and still defer to certify us in our Chancery aforesaid upon the Recognizance aforesaid, whereupon we very much wonder; We command you, that having searched the Rolls of such Recognizance made before the said W. and H. in the Year aforesaid, being in your Custody, as it is said, if you shall find the said Recognizance to have been made in Form aforesaid, and the Times of

(a) And Note, That in this Case, although escapes, yet the Action lies against the Bailiff. an *Ex parte talis* be sued by the Party who e 13 Ed. 3. Barr. 253.

Writ of Execution upon a Statute-merchant.

Payment aforesaid to be past, and that we have not been otherwise certified thereof in our Chancery, then that you certify us in our same Chancery upon the Recognizance aforesaid distinctly and openly, according to the Statute aforesaid, under the Seal there appointed for Recognizances of Merchants, that we may cause further to be done hereupon that which ought to be done, according to the Form of the Statute aforesaid.

And if he will not certify by this Writ, he may sue an *Alias* and a *Plurics* D and Attachment against the Mayor and Clerk; and it appeareth by this Writ, that if an Obligation be once certified in the Chancery, it ought not to be certified again without Affidavit made, that Execution was not sued upon it, and then he shall have a special Writ unto the Mayor for it; for then it shall be taken as a several Obligation upon every Certificate.

And also it ought to be certified under the Seal of him who is deputed to E seal the Obligation. And if the Mayor do make his Certificate unto the F Chancery, then the Party shall have a Writ to execute the Statute, thus:

The King to the Sheriff of Lincoln, greeting: Because A. of B. before C. and C. Clerks deputed to take Recognizances of Debts at L. or thus, before D. Mayor; or thus, before L. lately Mayor of our City of Lincoln, and F. Clerk, or, then Clerk deputed to take Recognizances of Debts at L. acknowledged himself to owe to E. ten Pounds, which he ought to have paid to him at the Feast of, &c. and hath not yet paid the same to him, as it is said; We command you, that you take the Body of the aforesaid A. if he be a Layman, and cause him to be kept safely in our Prison, until he shall fully satisfy the said E. of the Debt aforesaid, (or, shall fully satisfy the Executor of the Testament of the aforesaid E. of the aforesaid ten Pounds) and that you make known to us in what Manner you shall have executed this our Precept on the OEtave of Saint Hilary, wheresoever, &c. by your Letters sealed: And have, &c. (a).

And this Writ may be returned as well into the Common Pleas as King's G Bench. And if a Man make a Statute-merchant of one hundred Pounds H payable at divers Days, if he fail of Payment at any of the said Days, the Recognizee shall sue Execution at that Day, and shall not stay his Execution until all the Days are past, as he shall do of an Obligation.

[131.]

6 Ed. 3. 29.

Contrary in
Covenant; or
if he assent to
pay, by

5 Ma. 107.

32 H. 6. cont.

14 H. 8. 14.

Brudenell.

(b) If a Man be bound to pay twenty Pounds at divers Days, he shall not A have an Action of Debt upon the Bond, until all the Days are past. But if he who is bounden in a Statute-merchant be a Clerk or Abbot, &c. then the Writ of Execution is of another Form, viz.

The King, &c. Because A. Parson of the Church of B. before, &c. We command you, that without Delay you levy the aforesaid ten Pounds of the moveable Goods and Chattels of him the said A. in your Bailiwick, &c. and that you make known to us in what Manner, &c.

(a) And if on this Writ the Sheriff returns the Party dead, or *non est inventus*, a Writ shall issue to extend the Lands. But on a Statute-Staple certified, the Conusee shall have the Body, Goods and Lands by one Writ, 15 H 7. 14. And Note, by 29 Ed. 3. 1. it appears, that the Reprises of the Land (whereout the Conusee had Rent of twenty Pounds issuing) was of greater Value than the Extent; and yet it was intended

that the Lands were taken and delivered, though it was impossible to levy the Debt on that Extent. And Note; The Sheriff made a Delivery accordingly on the *Liberate*; yet on the Return thereof Judgment is rendered, *Quod tenet quousq' levaverit, &c.*

(b) Post. 167. 13 H. 4. F. Chancery 140. per Hill.

For a Clerk shall not be arrested by his Body upon that Statute, and if Process be awarded to arrest him, by that Statute he shall have a Writ unto the Sheriff, that he do not trouble or molest him, and if he have arrested him for the same, that he deliver him, if he know no Cause why he should not enjoy the Privilege of a Clerk: And in some such Writ there is a Proviso put in the End of the Writ, thus:

Provided, that if the aforesaid ten Pounds have not been levied upon the Lands, Goods and Chattels of him the said A. they may be levied, according to the Form of the Statute aforesaid, as is just, &c. Witnesses, &c.

B (a) If a Man be bounden in a Statute-merchant in twenty Pounds, and the Statute at the Suit of the Recognizee is certified in the Chancery, and afterwards he dieth, his Executors may have a special Writ unto the Mayor, reciting the Certificate before them, commanding them to certify the same again into the Chancery, and the Writ is such:

L. and W. Executors of the Testament of L. of B. have shewed unto us, that whereas R. &c. (as above in fo. 303. until) according to the Form of the Statute aforesaid: Nevertheless you have not cared to do any thing thereupon, because that by your Rolls you have found that our Chancery hath been heretofore certified of the same Recognizance: And the aforesaid Executors appointed have personally asserted before us in our Chancery, that no Execution of the Recognizance aforesaid in any wise hath been done in the Life of him the said L. or after his Death, by virtue of the Certificate thereof before made in Chancery, and have besought us, that we will provide for them a Remedy in this Behalf: And because we will help those Executors as far as we justly can in this Behalf, we command you, that having searched your Rolls concerning such Recognizance, if you shall find that Recognizance to have been made in Form aforesaid, and that the Times of Payment are past, as it is said, then that you certify us in our Chancery upon the Recognizance aforesaid distinctly and openly, under your Seals there appointed for Recognizances of Debts, as the Custom is, notwithstanding our Chancery is before certified thereof. Witnesses, &c.

A But this Writ is not granted but upon Affidavit and Oath made by the Executors in Chancery, or by him who would have that Execution.

(b) Writ of Execution upon a Statute-staple.

AND if a Man be bounden before the Mayor of the Staple in a certain Sum, to pay at a certain Day, &c. and he do not pay it according to the Statute; then he to whom the Obligation is made shall come before the Mayor and shew him the Statute, and pray him to certify it under the Seal into the Chancery, as he shall do upon a Statute-merchant. Or the Mayor may award Execution, if the Party be dwelling within his Jurisdiction, or

(a) So Note; Executors cannot proceed on the old Certificate, viz. to commence where the Testator left off, but they must begin again *de novo*. See *Dyer* 180. 17 *Ed.* 3. 31. 18 *Ed.* 3. 10. 28 *Ed.* 3. 91. 25 *Ed.* 3. 38. 36 *H. 8. Brit. Stat. Merch.* 43. 17 *Ed.* 3. 31. *in principio*.

(b) Note; Execution by a Mayor of the Staple, can be only within his Jurisdiction.

V. 45 Ed. 3.
22. Finchd.
Execution
shall be sued
first of the
Goods, and
then of the
Land.
But 7 R. 2.
Execution 46.
the Party hath
his Election to
take one or
the other, and
so is the Use
at this Day.

have Lands or Goods there, &c. And if the Mayor will not certify at the Request of the Party, then he shall have a Writ out of the Chancery unto the Mayor to certify the same, as he shall have upon a Statute-merchant shewed in Chancery; and upon the same an *Alias* and a *Pluries*, and Attachment against the Mayor, if need be; and when the Mayor hath certified the Statute under the Seal, then the Writ of Execution shall issue forth against the Party to arrest him, and to extend his Lands, &c. and this Writ shall be always returnable in the Chancery, and not in the King's Bench nor Common Pleas, as the Writ which issueth forth to do Execution upon a Statute-merchant; and the Form of the Writ is such:

The King to the Sheriff of Lincoln, greeting: Because R. of W. on the 20th Day of September in the Year, &c. before E. of B. Mayor of our Staple of B. deputed to take Recognizance of Debts in the same Staple, acknowledged himself to owe to W. of F. eight Pounds, &c. which he ought to have paid to him on the least of, &c. then, &c. And which he hath not yet paid to him, as it is said; We command you, that you take the Body of the aforesaid R. if he be a Layman, and keep him safely in our Prison, until he shall fully satisfy the said W. of the Debt aforesaid, and that you diligently cause to be extended and appraised, and seized into our Hand, all the Lands and Chattels of him the said R. in your Bailiwick, by the Oath of honest and lawful Men of the said Bailiwick, whereby the Truth of the Matter may be better known, according to the true Value thereof; and cause them to be delivered to the aforesaid W. until he shall be satisfied of the Debt aforesaid, according to the Form of the Ordinance thereof made: And that in what Manner you shall have executed this our Precept, you make known to us in our Chancery on the Morrow of All Souls next coming, wheresoever we shall then be, &c. by your Letters sealed: And have there this Writ, &c.

And by this Writ it appeareth, that the Sheriff may arrest the Conusor, and extend and take his Lands, Goods and Chattels, and return the same Extent in Chancery, &c. And thereupon the Conusee may sue a Writ unto the Sheriff out of the Chancery to deliver him the Lands and Goods to the Value of the Debt; which Writ is called *Liberate*, and is such:

[132.]

The King to the Sheriff, &c. Whereas R. of W. on the 20th Day (as above, until) by your Letters sealed; (and then thus:) And you have returned to us, that the aforesaid R. was not found in your Bailiwick after our Writ was delivered to you, but that you have taken into our Hands all the Lands and Tenements and Chattels of him the said R. in your said Bailiwick, and have caused them to be extended and appraised according to the Tenor of our said Writ; to wit, two Parts of one Messuage, which are appraised at five Pounds, &c. We command you, that you deliver to the same A. all the Lands and Tenements and Chattels aforesaid by you so taken into our Hands, if he will have them by the Extent and Appraisement aforesaid, to have them according to the Form of the Ordinance aforesaid, until he shall be satisfied of his Debt aforesaid: And that in what Manner you shall have executed this our Precept, you make known to us in our Chancery in fifteen Days of Easter, wheresoever we shall then be, &c. by your Letters, &c. And have, &c.

And if a Man be bounden before the Mayor of the Staple, or in a Statute-merchant before another Mayor, &c. and have no Lands but in *Durham*, or other County Palatine, then upon the Certificate of the Statute made by the Mayor,

Mayor, &c. upon the Return of the Sheriff, that he hath not Lands nor Tenements within his Bailiwick, the Party may surmise that he hath not any Thing but in the County Palatine, &c. and pray that the Tenor of the Record may be sent thither, to have Execution done, and upon that Surmise he shall have such Writ. Ed. 4. 10.

Writ to do Execution in a County Palatine.

THE King to the venerable Father in Christ I. by the same Grace Bishop of Durham, or to his Chancellor in the Bishoprick aforesaid, greeting, &c. By the Tenor of a certain Statute of the Staple, made before W. of W. lately Mayor of the Staple of Westminster, deputed to take Recognizances of Debts in the same Staple, of forty Pounds to T. of W. lately deceased, as it is said, and to E. of R. Citizen of London, lately acknowledged by Agnes, who was the Wife of H. of R. of the Bishoprick of Durham, and sent into our Chancery by N. B. now Mayor of the said Staple: We send to you inclosed in these Presents, that having inspected the Tenor aforesaid, you further cause Execution of the Recognizance aforesaid to be done at the Prosecution of Catherine, who was the Wife of the aforesaid T. I. F. and R. of L. Executors of the Testament of the aforesaid T. as of Right and according to the Law and Custom of the Kingdom of England shall be done. Witnesses, &c.

B And if the Statute be not sufficiently certified in the Chancery by the Mayor, &c. because he hath omitted any Part of the Bond, as the Name or Surname, or other Matter material, then upon Affidavit made, that he hath not had Execution by reason of that Certificate, he shall have a new Writ unto the Mayor and Clerk, &c. to certify the Statute fully again into the Chancery, notwithstanding his Certificate made before, and that Writ doth appear in the Register

If the Mayor doth make a Certificate of the Statute into the Chancery, and deliver the same unto the Recognizee, and the Party keepeth the Certificate, and will not put it into the Chancery; and afterwards another is made Chancellor, the Party ought to have a new Certificate to that Chancellor, otherwise he shall not have Execution of the Statute upon that Certificate made to the old Chancellor, which was not delivered in Time into the Chancery: And then he ought to sue a Writ in Chancery directed unto the Mayor, to make a new Certificate; and the Writ shall be such:

The King to the Mayor of the Staple of Westminster deputed to take Recognizances of Debts in the same Staple, greeting: It is shewed unto us, on the Behalf of D. &c. that whereas W. of E. &c. in the third Year of our Reign, before you in the Staple aforesaid, acknowledged himself to owe to the aforesaid D. forty Pounds, to be paid at a certain Time, according to the Form of the Statute-staple aforesaid; and although you have certified under the Seal of your Office, as the Custom is, to R. Bishop of London, lately our Chancellor, while he continued in the Office of Chancellor, that the said Time of Payment is past, yet, because the aforesaid D. hath hitherto kept the said Certificate in his own Custody, and the aforesaid R. lately Chancellor, to whom by Name you before certified thereof, was long since and now is discharged from his Office of Chancellor; We will, and com-

Recognizance in the County before the Sheriff.

mand you, that the said Certificate, by you so made to the aforesaid late Chancellor, being truly and wholly restored to you, and you having searched the Rolls of such Recognizances made before you in the Year aforesaid, if you shall find that the Recognizance aforesaid was made, then that without Delay you certify to our Chancellor that now is, in the same Chancery, upon the Recognizance aforesaid distinctly and openly, according to the Form of the Statute aforesaid, under the Seal appointed for Recognizances of the Staple aforesaid, that we may further cause to be done hereupon that which, according to the Statute aforesaid, shall be done, the said Certificate so before made notwithstanding. *Witness, &c.*

But note, That if in the first Certificate he hath not expressed the Name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and sue Execution upon it, and therefore it is good to make the Certificate general to the Chancellor without naming his Name.

Recognizance in the County before the Sheriff.

[133.] IF a Man doth acknowledge in the County before the Sheriff to pay to another a certain Sum of Money at a Day certain, and do not pay it at the Day, then the Recognizee shall have Writ out of the Chancery unto the Sheriff, commanding him to do Execution upon that Recognizance; and the Writ shall be such:

*The King to the Sheriff, &c. A. hath shewed unto us, that whereas he impleaded B. in your County by our Writ, and he the same B. in that full County acknowledged himself to owe to the aforesaid A. certain Money to be rendered at a certain Time, you, notwithstanding that Time is past, have not yet caused the same Money to be paid to him the said A. upon his Complaint according to his Recognizance, to the great Damage and Grievance of him the said A. And because we are willing to relieve the same A. in this Behalf as it shall be just, we command you, if it is so, that then you levy that Money of the Goods and Chattels of him the said B. in your Bailiwick, and cause the said A. to have the same without Delay, that repeated Clamour thereupon may not come to us. *Witness, &c.**

Bro. Recog. 16. Ant. 132. But it seemeth Recognizance shall be made when a Plea is depending in the County before the Sheriff by Writ between the Parties in Debt, &c. but if there be not any Plea depending in the County by Writ, but by Plaint, *quere* if that Recognizance shall be made; and it seemeth reasonable that it may be taken, as well when the Plea of Debt is depending in the County before the Sheriff by Plaint, as if it were by the King's Writ.

But if a Man come into the County before the Sheriff, and there in Court acknowledge to pay a certain Sum of Money unto another at a certain Day, &c. where there is not any Plaint or Action depending betwixt the Parties, whether this Acknowledgment shall be good or not, *quere*. And it seems reasonable, that if it be under the Sum of forty Shillings, that such Acknowledgment shall be good, and bind the Party.

And if the Party have a Writ to the Sheriff to do Execution of such Recognizee (as before is said) and the Sheriff will not do the same, then the Recognizee may sue an *Alias* and a *Pluries*, and Attachment against the Sheriff; and the Form of the Writ is such:

The King, &c. We have received Information on the Behalf of A. that whereas we lately commanded you, that if B. should acknowledge himself to owe to A. (so much) then you should distrain him the said B. to render the said Debt to the same A. without Delay; and although the said B. hath before you acknowledged himself to owe to the aforesaid A. the Debt aforesaid, yet you have hitherto delayed, and still do delay to distrain him the said B. to render that Debt, to the great Damage and Grievance of him the said A. And therefore we command you, if so it is, that then you cause Execution of the Recognizance to be done without Delay, according to the Tenor of our Command aforesaid, and that you in no wise omit this. Witness, &c.

But it seemeth by this Writ, that if the Recognizor will not again acknowledge the Debt before the Sheriff, when he cometh to him to do Execution, &c. but say that he hath paid the same, that then the Sheriff ought not to do Execution.

And there is another Writ in this Form :

The King to the Sheriff, &c. We command you, that if A. hath acknowledged himself to owe to B. one hundred Shillings, then distrain him the said A. to render the Debt aforesaid to him the said B. &c.

And he may have an *Alias* and a *Pluries*, and *Attachment* upon the same, &c. And if the Sheriff return upon the *Alias*, That he hath distrained the Party by *Corn* or other *Chattels*, for which he hath not found Buyers; then by the Title of the Register shall be awarded a Writ of *Pluries reiterando* returnable, *Et illud insuffic' reputand'*, &c. But *quere* tamen of that; for it seemeth to be a good Return: And *quere* if the Sheriff may sell the Goods to pay the Recognizance, for it seemeth by the Register he may sell the Party's Goods.

C And if a Man be in Execution upon a Statute-Merchant, he ought to be found in Prison for the Rent and Revenues of his Lands which are in Execution, &c. that is to say, with Bread and Water, as appeareth by the Statute; and if he have not the same, he may sue a Writ upon the Statute directed to the Mayor and Sheriff, where he is in Execution, that he have the Livelihood which the Statute giveth him; and the Writ is such:

Ant. 131.
Sustena. of the
Cognitor.

*The King to the Mayor and Sheriffs of London, greeting: Whereas it is contained in the Statute set forth of Merchants, that Merchants, for whose Debts it shall happen that their Debtors are arrested and imprisoned according to the Form of the Statute aforesaid, are bound to find for those Debtors remaining in Prison Bread and Water for their Sustenance; We command you, that you cause to be done in this Case to W. of S. arrested and detained in our Prison for a Debt to E. of K. by Form of our Statute aforesaid, as it is said, if he be detained in the same upon that and no other Occasion, that which ought to be done, and in the like Case hath been used to be done, according to the Form of the Statute aforesaid. Witness, &c. And upon that he may have an *Alias*, *Pluries* and *Attachment*.*

Writ de Perambulatione facienda.

Ant 128.

D A Writ de Perambulatione facienda ought to be sued with the Assent of both Parties, where they are in Doubt of the Boundaries of their Lordships, or of their Towns; then they by Assent may sue a Writ, directed unto the Sheriff to make the Perambulation, and to fix the Bounds and Limits between them in Certainty; and the Writ is such:

The

Writ de Warrantia Chartæ.

The King to the Sheriff, &c. We command you, that having taken with you **E** twelve discrete and lawful Knights in your County, you go in your own Person to the Land of A. of B. in N. and the Land of C. of D. in E. and by their Oath cause to be made a Perambulation between the Land of him the said A. of B. in N. and the Land of him the said C. of D. in E. so that the Perambulation be made by certain Metes and Divisions; because the aforesaid A. and C. have put themselves before us upon that Perambulation, and make known to our Justices at Westminster, &c. (such a Day) or to the Justices at the next Assise, &c. under your Seal and the Seals of four lawful Knights of those who were present at that Perambulation, by what Metes and Divisions that Perambulation was made. And have there the Names of the Knights and this Writ, &c.

[134.] And the King may make his Commission to other Persons to make that **A** Perambulation, as well as to the Sheriff, and to certify the same into the Common Pleas, or in the Chancery, or elsewhere, &c. And such Commission is oftentimes *(a)* granted to make Perambulation of three or four Counties where they are in Doubt in the Bounds and Limits thereof, and this Perambulation made by Assent, shall bind all the Parties and their Heirs.

19 Ed. 3. 58. But if Tenant for Life be of a Seigniorship, and another who is Tenant in **B** Fee-simple of another Seigniorship adjoining, sue forth such a Writ or Commission, by Reason whereof a Perambulation is made, it seemeth the same shall not bind him in Reversion; neither shall the Perambulation made with the Assent of Tenant in Tail bind his Heir.

And the Perambulation may be made for divers Towns, and in divers **C** Counties, and the Parties ought to come in Person into the Chancery, and there acknowledge and grant that a Perambulation be made betwixt them, and the Acknowledgment shall be enrolled in the Chancery, and thereupon a Commission or Writ shall issue forth. And if the Parties cannot come in Chancery, then they ought to sue forth a Writ of *Dedimus potestatem* directed to certain Persons, to take their Acknowledgment, and to certify the same into the Chancery under his Seal, &c. and then upon that Certificate returned into the Chancery, That Commission or Writ may be granted, altho' the Parties do not appear in Person in Chancery to pray the same.

Hob. 20.

Writ de Warrantia Chartæ.

In a Warrant
Chartæ, the
Defendant
said, that he

THE Writ of *Warrantia Chartæ* lieth properly where a Man doth enfeoff **D** another by Deed, and bindeth him and his Heirs to *Warranty*, &c. Now if the Defendant be impleaded in an Assise, or in a Writ of Entry in had a Formedon pendent of the Land, and no Plea, and that was against the Issue in Tail. *Itin. North. 2 Ed. 3. Garr. de Chartæ 13. 2 Ed. 2. Ibid. 6.*

(a) Note; A Division was made between the Counties of C. and H. by an Inquest taken of four Counties by Force of a Commission; and resolved, 1. That if Land lying in the Town of A. but in Truth within the County of C. be allotted to the County of H. that they shall still

remain of the Town of A. as before. 2. That this shall not conclude any of the County of C. to suppose by Writ or otherwise, that the Lands are in the County of C. 3. If they are at Issue on this Point, it shall be tried by a *Venue* of both Counties. *Quere 29 Ed. 3. 45.*

the

the Nature of an Assise, in which Actions he cannot vouch, then he shall have that Writ against the Feoffor or his Heir, who made such Warranty; and the Writ is,

E (a) *The King, &c. Command A. that justly, &c. he warrant to B. one Mes- Two Tenants
suage with the Appurtenances in D. which he holds and claims to hold of him, and in Common
whereof he hath his Charter, as it is said, &c. Or thus: The Manor of N. shall join in
with the Appurtenances, and the Advowson of the Church of the same Town, this Writ.
which he holds, &c. (as above) whereof he hath his Charter, or the Charter of 28 Ed. 3. 90.
D. his Father, or Mother, or other Ancestor, whose Heir he is, as it is said. And Somewhere three
unless, &c. are Jointenants, and a
Release to the*

other two. 40 Ed. 3. 41, 42. 16 H. 7. 6, 7. If the Defendant tender a Plea to the Plaintiff, and the Plaintiff will not enter it; he shall not have Advantage in this Writ.

And although the Writ doth suppose that he holdeth of the Defendant, yet that is not material whether he holdeth of him or not.

F And also that the Plaintiff holdeth any Land of the Defendant by Homage Ancest', and hath no Charter thereof: (b) Yet he shall have this Writ of 5 Eliz. Dyer
Warr' Chartæ against the Defendant, and the Writ shall say *unde Chartam 221. If the
habet, &c.* and yet he hath no Deed to shew, but only shall hold by Ho- Warranty be
mage Ancestrel, which implieth a Warranty, and therefore in that Case, these only against
Words, *unde Chartam habet, &c.* are not material. the Grantee
and his Heirs,
and there be

not Dedi & Concessi in the Charter, per Curiam, the Writ lieth not.—12 H. 3. Garr. de Charters 27. One
brought this Writ, *Unde Chartam suam habet*: The Defendant said, *Non habet Chartam suam*, and the Plain-
tiff confessed the same, and said it was *Charta Antecessoris sui*; adjudged for the Defendant.

G If a Man have a Lease of Lands for Life rendring Rent, or maketh a Gift in Co. Lit. 384. b.
Tail rendring Rent without Deed, and afterwards the Lessee or Donee is im- 21 H. 6. 8.
pleaded in such Action where he cannot vouch, then he shall have this Writ Upon Owelty
of *Warrantia Chartæ* against the Lessor or Donor, or his Heir who hath the of Services this
Reversion: For that (c) Reversion and Rent reserved, maketh a Warranty Writ lieth;
but that is af-
ter Seisin of
the Services.

(a) Note; This Writ concerns the Land, and therefore a Fine may be levied thereon, 18 Ed. 4. 22. if it be brought in the County where the Land is. 29 Ed. 3. 3. per Kirt. Sed Stouff. cont. Yet for that this Writ is founded on the Covenant, which is in a Manner personal; although thereby the Plaintiff ought to recover Lands in Value; it is in the Party's own Election to bring the Writ in what County he pleases, and he need not bring it in the County where the Lands lie: for if he be impleaded thereof, he may well vouch in any County, 31 Ed. 3. *Garranty de Charters* 14. per Thirn. and so adjudged accordingly, and agreed by Thirn. &c. That if the Lands, &c. in divers Counties are passed by a Deed or Fine, he need not sue several Writs, but one Writ shall satisfy for all, 20 Ed. 3. 3. 1. but he ought to suppose in his Count, that he is impleaded in each County. Dyer 221. *Quere*. See 12 H. 3. pl. 27. 24 Ed. 3. 35.

(b) See *Post*. 135. 24 Ed. 3. 35. 44 Ed. 3. pl. 18. 6 H. 7. 1, 11. and note by 29 Ed. 3. 4. he derained the Warranty against the Defendant, by bringing a *Scire facias* without shewing the Record.

(c) Note; Tenant by the Curtesy shall not vouch the Heir to recover in Value; nor the Lessee for Life, him in Remainder, 14 H. 6. 25. and 10 H. 7. 10. a good Case of Voucher and Recovery in Value, per Cur' a Reversion and Rent without the Words *Dedi, &c.* without Deed, good to bind him in the Reversion to Warranty, be it the Lessor or his Grantee. 10 H. 7. 10. 34 Ed. 3. *Garranty* 30. 20 Ed. 3. *Counterplea of Warranty* 7. But the Vouchee there may disclaim if he be not the Lessor, &c. 10 H. 7. 10. So if he be (not) Lessor, Grantee or Heir. 17 Ed. 3. 39. 18 Ed. 3. 47. See Co. Lit. 384. b.

21 H. 6. 8. in itself by the Statute of *Bigamis, cap. ult.* although he hath not any Deed
 Upon a Feoff- thereof.

(a) And if a Man give Lands to one in Fee by Deed by these Words, II
 with Warrant- *Dedi, concessi, &c.* now he is bound to warrant the Lands to the Feoffee by
 ty, he ought those Words, and if the Feoffee be impleaded, he shall have a Writ of *Warran-*
 in his Count- *tantia Chartæ* against the Feoffor, by these Words, *Dedi, concessi, &c.* but not
 ro set forth the against his Heir, for the Heir shall not be bounden unto a Warranty made by
 Deed. 14 Ed. his Father, unless he bind him and his Heirs to Warranty by express Words
 3. 35. acc. in the Deed: As to say, *Ego & Hered' mei omnia prædict' terras, &c. war-*
rantizabimus, &c.

In a Præcipe But note, That he shall not have the Writ of *Warrantia Chartæ* against I
 quod reddat, the Feoffor, or against him against whom he hath the Warranty, if he be im-
 where the Ten- pleaded in any Action in which he may vouch him, for then he ought to
 nant hath a vouch him to Warranty; and if he will not vouch him to Action, he shall
 Release or not afterwards have a Writ of *Warrantia Chartæ* (b).

Confirmation the Possession shall be counterpleaded, he shall have this Writ. Wood and Brian. 12 H. 7. 2.

(c) And a Man may sue forth this Writ of *Warrantia Chartæ* before he be K
 impleaded in any Action, but yet the Writ doth suppose that he is impleaded:
 21 H. 6. 41. And if the Defendant appear, and say that he is not impleaded, by that Plea
 22 H. 6. 22. he confesseth the Warranty, and the Plaintiff shall have Judgment to recover
 30 H. 7. 7. his (d) Warranty, so as if the Defendant be after impleaded, and vouch him
 to Warranty, and he entreteth into the Warranty, and pleadeth and loseth,
 and that the Defendant recover in Value. The Defendant shall have in Value
 of the Lands against the Vouchee, which he had at the Time of the Purchase
 2 H. 4. 14. & of his *Warrantia Chartæ*, and therefore it is good Policy to bring his *Warran-*
 12 H. 4. 13. *tia Chartæ* against him before he be sued, to bind the Lands of the Vouchee
 he shall have in Value the Lands which he had at the Time of Judgment, for the Judgment makes them subject to the Ex-
 ecution. 1 Ed. 3. 11. Fitz. Garr. de Charter 2. ac. 8 Ed. 2. Voucher 237. A Man cannot vouch a Clerk amount,
 or a Man outlawed; but rather have *Warrantia Chartæ*. Contra of an Ideot quod reddat. Quære if it be Law
 at this Day. Br. Warr. Chart. 29. 8 Ed. 4. 10. Markham acc. 24 Ed. 3. B. Warrant. Chart. 13 acc. 19 Ed. 3.
 Garr. Chart. 9. ac.

(a) *A.* makes a Lease for Life by *Dedi*, and grants over the Reversion; yet the Lessee may vouch *A.* 48 Ed. 3. 2. See 6 H. 7. 2. 14 H. 6. 25. 48 Ed. 3. 2. *Perk.* 26. and note; if one warrants only against himself and his Heirs, Warranty of Charters does not lie, *per Cur'*, if it has not the Word *Dedi* in the Deed. *Dyer* 221.

(b) See 18 Ed. 3. 42. *Garranty de Charters* 8. It is no Plea here to say that the Plaintiff is impleaded in such an Action, wherein he may vouch, &c. though it is a good Plea to say, that he was not Tenant the Day of the Writ purchased; yet in a *Scire facias*, it is a good Plea to say, that he was impleaded in such an Action, wherein he might vouch, but did not, &c. and so by Reason of his Default he could not have Execution. See accordant 9 Ed. 2. *Garranty de Charters* 30. that it is a good Plea. *Vide infra* K. *sed N. Br.* 135. D. *contra.*

(c) And therefore the Count is good, without shewing for what he is impleaded. 29 Ed. 3. 4. (p. 135 B) See 7 H. 6. 17. a *Scire facias* against a Disseisor on a Fine, and pending the Writ the Disseisor enters, he shall not have a Warranty of Charters, if no *Scire facias* be sued against him. By *Passon*

(d) But no Damages. 18 Ed. 3. 42. 29 Ed. 3. 4. 31 Ed. 3. 22. See 2 H. 4. 14. *contra* and 1 Ed. 6. 11. *contra.* See 16 Ed. 3. pl. 20. *contra* 9 Ed. 2. pl. 30.

which

which he had at (a) that Time. For if a Man be vouched, he shall not render in Value, but of the Lands which he had at the Time of the Voucher, and if he have aliened the Lands before the Voucher, he shall render nothing in Value; and therefore it is Policy to bring his *Warrantia Chartæ* against him when he hath the Land to render in Value. And upon this Writ and Judgment the Land shall be bound. But if a Man recover his Warranty by Writ of *Warrantia Chartæ*, and hath bounden the Land which the Vouchee had at that Time; yet if he be afterwards impleaded for that Land, for which he recovered his Warranty, he ought to vouch him against whom he recovered his Warranty, to defend the Land, if he be sued in any Action wherein he may vouch, otherwise he shall not have Advantage by Recovery of his Warranty in the *Warrantia Chartæ* (b).

[135.]

A And if a Man recover his Warranty in a *Warrantia Chartæ*, and afterwards is impleaded in an Action in which he cannot vouch, as by Assise, or by (c) *Scire facias* sued forth upon a Fine, &c. It seemeth he ought to give Notice to him against whom he hath recovered his Warranty of the Action, and to pray him to shew him what he shall plead for to defend the Land, &c. *Quære tamen* (d) thereof.

B If a Man exchange Lands with another by Deed, if he be impleaded, he may vouch him with whom the Exchange was made, by reason of that Exchange; and also he shall have a Writ of *Warrantia Chartæ* by that Deed of Exchange, although there are not Words of Warranty in the Deed; and the Vouchee shall have a Writ of *Warrantia Chartæ*; *tamen quære* (e) of that.

23 H. 3.
Gar. Charters
26.

(a) *Viz.* At the Time of the Warranty demanded, per Hill. 16 Ed. 3. *Garranty de Charters* 20. and per Finchd. If the Defendant has not Lands in Value, the Plaintiff shall recover Damages. 29 Ed. 3. 3. *vide post.* 135. H.

But Note; If the Tenant vouch, and after the Entry into the Warranty the Vouchee dies, and in a Refummons against him he revouches the Heir, and the Heir loses all the Land, which his Ancestor had the Day of the Voucher, he shall be bound to render in Value to the Tenant, per Willy, 18 Ed. 3. 17. and see the like per Cur. 22 Ed. 3. 3. But it is there held, That when he recovers in Value in another County, than where the Vouchee is summoned (except the Tenements descend after the Voucher) he shall not. 13 Ed. 3. *Recovery in Value* 3. Yet see 4 Ed. 2. *Voucher* 248. *quod sic*, per Chester on a *Testatum*, quod Hill negavit. See 29 Ed. 3. 4. 16 Ed. 3. pl. 20. 46 *aff.* 51. 19 Ed. 3. pl. 9. 41 Ed. 3. pl. 22.

(b) See accordant 18 Ed. 3. 42. 19 Ed. 3. *Garranty de Charters* — that it is a good Plea

in a *Scire facias* on a Judgment in a *Warrantia Chartæ*, but not in the *Warrantia Chartæ* itself.

(c) It seems he ought to bring his *Scire facias pendente placito*. 19 Ed. 3. *Garranty de Charters*. 11 Ed. 3. *ibid.* 22. But in the *Scire facias* he ought to shew the first Deed if the Deed be not entered. 18 Ed. 3. 46. per Thirn. *vide* 8 Ed. 4. 1.

(d) And therefore the Guarrantor may maintain the Guarrantee in an Assise brought against him, on the Tenant's Request. 11 H. 6. 41.

(e) *Videtur quod sic*, per Thirn. 17 Ed. 3. 44. *sed Hill and Shard contra*, because none shall have it but the Tenant himself; yet see 18 Ed. 3. 19. per Shard, and 7 H. 4. 18. That a Vouchee shall have a *Warrantia Chartæ* where he cannot vouch (over) 21 Ed. 3. 50. and by Seaton, the Defendant in a *Warrantia Chartæ*, has no Remedy to have his Warranty over. See 31 Ed. 3. *Warranty of Charters* 22. per Burton, that a Tenant by Warranty shall have his Warranty over. *Vide ant.* 124. F. 23 H. 6. pl. 26. 17 Ed. 2. 44. *contra*; *quære* 15 Ed. 3. pl. 25.

7 H. 4. 18. And if a Man be impleaded who is not Tenant of the Land, but Pernor C
 17 Ed. 3. and of the Profits, he shall not have a Writ of *Warrantia Chartæ*, because he
 Br. War. c. 30. can lose nothing. And a Man shall have a Writ of *Warrantia Chartæ* al- D
 None shall though he may vouch in the Action brought against him, and if he do recover
 have the Writ in the *Warrantia Chartæ*, and afterwards lose in the Action brought against
 but the Terre- him, in which he hath vouched him against whom he recovered his Warrant-
 tenant. ty, then he shall have a Writ which is called *Habere fac' ad valenc' (a)*, &c.
 24 Ed. 3. 25. presently within the Year after the Recovery, and shall not sue forth *Sci' fac'.*
 Willbye
 7 Ed. 4. 12. And an Assignee shall have a Writ of *Warrantia Chartæ*.
 3 Ed. 4. 7. (b) And a Man shall have a Writ of *Warrantia Chartæ* of Land or Rent E
 A good Plea which he demanded against him out of Land, &c. but there he ought to
 that he had nothing in the Land Jour de vouch of Land discharged of the Rent, &c. if he may vouch in the Ac-
 brie purchase. tion.
 19 Ed. 3. (c) And a Man may bring his Writ of *Warrantia Chartæ* in what County F
 Gar. c. 10. he pleaseth, if the Deed bear not Date in a certain Place or County; for then
 4 Ed. 3. he ought to bring the Writ where the Deed beareth Date. But if a Man
 Gar. c. 12. ac. bring a Writ of *Warrantia Chartæ* by reason of Homage *Auncestral*, &c. then
 for Rent-Ser- vice. it ought to be brought in the County where the Land lieth.
 Ed. 1. (d) And if a Man doth infeoff another of Lands by Deed with Warranty, G
 Voucher 266. if the Feoffee make a Feoffment over, and taketh back an Estate in Fee, the
 21 H. 6. 40. Warranty is determined, and he shall not have a Writ of *Warrantia Chartæ*,
 Newton. because he is in of another Estate. And so if *A.* disseise *B.* and infeoff *C.* (e)
 See Littl. 111. with Warranty, who infeoffeth *D.* with Warranty, upon whom a Stranger
 for the Reason entreth, in whose Possession *B.* the Disseisee releaseth his Right, all the War-
 of this Case. ranties are extinct, and if *D.* re-enter, and be impleaded, he shall not have a
 Writ of *Warrantia Chartæ*, because he is in of another Estate by Wrong.
 (f) But if a Man be impleaded, for which he purchaseth a Writ of *War-
 rantia*

(a) So is 16 Ed. 3. *Garranty de Charters* 20. *contra* where he recovers before the Writ brought against him; yet there he shall have a *Scire facias*. 19 Ed. 3. *Warranty of Charters* 10. And it seems if the Defendant does not acknowledge (or know) that he has lost, he shall have only a *Scire facias*. 16 Ed. 3. *ibid.* 20. and 29 Ed. 3. 4. *per Tiff.* See 18 Ed. 3. 4, 2. 9 Ed. 2. pl. 2. 45 Ed. 3. 10. *Bro. Warranty* 20. 36 Ed. 3. pl. 11. 9 Ed. 2. pl. 30. 31 Ed. 3. pl. 22.

(b) So is 30 Ed. 2. 20. 31 Ed. 3. *Garranty de Charters* 20. *per Finchd.* but others *contra*, where the Case was, *A.* enseoff *B.* with Warranty, and *B.* recovers in a *Warrantia Chartæ*. on a general Count of the Land, and afterwards a Rent is recovered against him; and he brings a *Scire facias* on the general Judgment in the *Warrantia Chartæ* to have the Value of the Rent; and *per Thirn.* he shall not have in Value, seeing he never demanded Warranty of the

Rent, but *Finchd.* and it seems the better Opinions were *contra*.

(c) 4 Ed. 3. pl. 12.

(d) And see accordant *per Newton.* 22 H. 6. 22. *vide infra*.

(e) And see accordant 21 H. 6. 41:

(f) *Contra per June and Paston.* 14 H. 6. 26. Note the Case 21 H. 6. 41. *Warranty of Charters per Mills versus H. Clifford*, and counts that one *R.* had arraigned an Assise against him and the others, pending which Writ, the Plaintiff came to the Defendant, and shewed that he was in by his Feoffment with Warranty, and prayed him to administer, *i. e.* to assist him with a Plea to bar the Demandant, which he refused; and then pleads, that long Time before the Defendant any Thing had, *A.* and *B.* were seised, till disseised by *C.* who enseoffed the Defendant, who enseoffed the Plaintiff, as he had alledged, and *A.* died, and *B.* entred on the Plaintiff.

Markham

warrantia Chartæ against whom he hath a Warranty, and vouch him also in the Action; and afterwards, depending the Action, a Stranger who hath ancients Title entrench upon him, yet that shall not abate his *Warrantia Chartæ* sued out before; *quod vide* 21 H. 6.

H (a) If a Man be impleaded in Assise, &c. and he bring a Writ of *Warrantia Chartæ*, and counts, that he is impleaded by Assise, &c. and that he hath lost, &c. If the Plaintiff recover his Warranty, he shall recover his Damages, and also to have the Value of the Land lost.

4 Ed. 2. Gar. Charters 29. it is but a personal Action in the Nature of a Covenant,

therefore he shall recover Damages. 2 H. 6. 31. It is holden, that in this Case he shall recover Damages only. But it seemeth by Br. Warr. Chart. 31. that if he hath no Land to be recovered in Value, that he shall not recover Damages tantum, nor more than in Voucher.

I And a Man may sue forth divers Writs of Warranty of Charters against divers Men: And if he hath divers Warranties against them, he shall recover severally against them.

K (b) And a Man may sue a Writ of *Warrantia Chartæ* at the Common Law for a Warranty made of Lands in Ancient Demesne.

Markham demurred to this Plea, for that it does not shew whether the Entry was before, or pending, or after the Assise, and 22 H. 6. 22. it was ruled by the Court that it was no Plea, if it does not shew the Entry to be before the Assise brought, or before the Request made: For if the Entry was after Judgment or Request, the Plaintiff is lawfully intitled to an Action: For by *Newton*, the Request is in Nature of a Voucher of a Vouchee, so as to devolve the Warranty (*contra* if it be after the Entry into Warranty) whereupon *A.* waived the said Plea, and shewed that *B.* entred on the Plaintiff before any Request; and *Markham* demanded Judgment, seeing that he acknowledges he was Tenant at the Time of the Assise arraigned, and that the Request was pending the Assise; in which Case suppose a Stranger had entred by elder Title, yet against him (Law) the Writ is good, as of the Tenancy he had the Day of the Writ purchased: And by *Newton*, *Passon* and *Fulk.* it was now a good Plea; for although he remained Tenant to the Demandant after the Entry of *B.* yet he is not so against the Defendant; wherefore they joined Issue, if the Entry was before the Request. 22 H. 6. 22, 23. and *vide* 41. *ib.* so that it seems to me, that though the Entry was after the Request, yet if it was before the Writ of Warranty of Charters purchased, the Entry of the Stranger would oust

him of his Warranty; for the Request is not in lieu of Voucher, but only the Writ of Warranty of Charters; and this is well proved, for that the Lands which the Vouchee has, are bound from the Time of the Voucher; but the Lands of the Tenant in the Warranty of Charters only from the Time of the Writ purchased; yet it seems clearly, that if in an Assise the Defendant requests his Guarrantor to give him a Plea, and he refuses, and after Judgment is given, &c. that so long as he continues Tenant of the Land he shall have a *Warrantia Chartæ*; but *contra* if he has not made any Request, and according to this Diversity are the Books to be intended. *Register* 158. and 24 Ed. 3. 75. because till Execution he continues Tenant, and has his first Warranty still on Foot.

If a Warranty be made to a Man and his Assigns, the Assignee of the Heir of the Feoffee shall vouch as Assignee. *Quod nota*, 7 Ed. 3. *Warranty*, &c. 44, 10 Ed. 3. 32. 19 Ed. 2. 85. 13 Ed. 1. 93.

(a) See accordant 4 Ed. 3. *Guarranty*, &c. 29 Ed. 3. *ibid.* 30. and *ant.* 134. K. *Bro. Gar-ranty* 31. 16 Ed. 3. *pl.* 20. 4 Ed. 2. *pl.* 29.

(b) See 16 Ed. 3. *Cause a remover* 15. *Reg.* 12. 30 Ed. 3. 13. and *per Skipw.* the Tenant shall have Warranty against the Lord in the Lord's own Court.

(a) And if a Man have a Writ of *Warrantia Chartæ* depending, although **L** that the Plaintiff who brought the Action against him who brought the *Warrantia Chartæ* be Nonfuit in his Action, the same shall not abate the Writ of *Warrantia Chartæ* although he hath not an Action sued against him for the Land, &c.

Writ de Mesne (b).

18 H. 3.
Mesne 78.
adjudged that
the Mesne
ought to ac-
quit the Ten-
nant against
all Lords Pa-
ramount, 29
Ed. 3. 34. ac.
Note, That
the Plaintiff
in a Writ of
Mesne need-
eth not in the
County to shew
the Certainty

THE Writ of *Mesne* lieth where there is Lord, Mesne and Tenant, and M each hold by Owelty of Services, as by Homage, Fealty and twenty Pounds Rent yearly. Now if the Tenant be distrained by the Lord Paramount for the Rent or Service of the *Mesne* behind, he shall have a Writ of *Mesne* against the Lord who is *Mesne*, and by the Writ he shall recover his Damages if he be distrained, otherwise not: And by that Writ he shall be compelled to do the Service, and to pay the Rents, and the Writ may be sued in the County before the Sheriff; and the Writ is,

(c) *The King to the Sheriff, &c. We command you, that you justice A. that N justly, &c. he acquit B. of the Services which C. requires from him for his Freehold, which he holds of the aforesaid A. and whereof he complains that he is distrained for his Default, as he can reasonably shew, that he ought to acquit him, that we may hear no more Clamour, &c.*

of the Tenure between the Mesne and the Lord Paramount, but generally to say, that he holdeth over, per 38 H. 6. 12. and 39 H. 6. 29. 13 Ed. 4. 6. If there be Lord, Mesne, and Tenant, and the Tenant is distrained by the Lord, for which he bringeth a Replevin, the Lord avoweth upon a Stranger; the Tenant may have a Writ of *Mesne*: Yet the Mesne cannot join because the Avowry is made upon a Stranger.

And if it be sued in the Common Pleas, the Writ is,

The King to the Sheriff, &c. Command A. that justly, &c. he acquit B. of the Service which we require from him for his Freehold, &c. whereof he the said A. who is the Mesne between us and the aforesaid B. ought to acquit him, and whereof he complains, that for his Default he is distrained, and unless, &c. And this Writ is where the King distraineth for Services, &c.

And if another Person be Lord Paramount, then the Writ is, *That he acquit B. &c. which C. requires of him for his Freehold, &c. whereof he the said A. who is the Mesne between C. and the aforesaid B. ought to acquit him, &c.*

(a) *Infinite*; and therefore in a Writ against two, they may couch *per Distress in infinitum*. 38 Ed. 3. 1. 9 Ed. 2. pl. 3. 41 Ed. 3. pl. 9.

(b) *Note*; The Writ of *Mesne* ought to be brought in the County where the Lands lie, and if *Nilil* be returned against the Lord, a Writ shall issue to another Sheriff on a *Testatum*. 29 Ed. 3. 3.

(c) *Note*; Though *A.* does not hold of *C.* immediately, but only by a *Mesnalty*, yet the Writ is good; adjudged 29 Ed. 3. 34. — Also in this Writ the Quantity of the Services are taken by Protestation, and several Tenancy is a good Plea. 2 H. 5. 2.

A And the Writ of *Mesne* may be sued and removed out of the County, at the Suit of the Plaintiff by a *Pone* without Cause, and at the Suit of the Defendant with Cause shewed, as in a *Replevin*. [136]

And a Man may have an Acquittal, and sue forth a Writ of *Mesne* upon it divers Ways. One if the *Mesne* grant unto his Tenant by his Deed, upon his Tenure made of him, to acquit him against his Lord Paramount, he shall have a Writ of *Mesne* upon that Grant. Another Cause of Acquittal is where he holdeth in Frankalmoigne. Another Cause is, where he holdeth in Frankmarriage (*a*); or where he holdeth by the like Service as the *Mesne* holdeth over, which is called Owelty (*b*).

B
C
D

14 Ed. 3.
Mesne 7.
38 H. 6. 12
39 H. 6. 29.
Prifot.

And also a Man may have an Acquittal by Prescription, as if he hold by Homage *Auncestral*.

And also by Conufance in a Court of Record for to acquit him, &c. And the Men of *Cornwall* claim to plead a Plea in a Writ of *Mesne* in the County without Writ, and that they have had Allowance thereof in Eyre. And although the Writ of *Mesne* be depending betwixt the *Mesne* and the Tenant Paravail, yet the Lord shall distrain the Tenant Paravail for the Rents and Services, and shall not tarry until the Writ of *Mesne* be ended betwixt them, whether he ought for to acquit the Tenant or no.

(c) And if a Man bring a Writ of *Mesne* where he is not distrained, yet the Writ is maintainable; but then he shall not recover Damages: For the Writ is brought only for to recover the Acquittal, &c. As if he bring a Writ of Warranty of Charters where he is impleaded, &c. he is to recover the Warranty *pro loco & tempore*.

E

7 H. 4. 12.
Ant. 134. K.
Br. Mesne 22.

And if the Tenant holdeth by the Services which the *Mesne* holdeth over, and also by other Services, it is a good Owelty to have Acquittal, because it is such, and more. And although that the Lord dieth depending the Writ of *Mesne*, yet the Writ shall not abate (*d*).

F

4 H. 6. 25, 28.
4 Ed. 4. 35.
11 H. 4. 55.
10 H. 6. 26.

(e) And Tenant for Term of Life where the Remainder is over in Fee, shall have a Writ of *Mesne* against the *Mesne*: But Tenant for Life shall not have a Writ of *Mesne* against him in the Reversion. But Tenant in Dower shall

G

25 H. 6.
Mesne 12.
17 Ed. 3. 19.
Br. Mesne 22.

(a) Note; The Issue of the Donce in the fourth Degree shall not have a Writ of *Mesne*, as on a Frankmarriage, but as on a Gift in Tail. 12 H. 4. 9. *W. W.* See 38 H. 6. 12. 11 H. 4. 52. 46 Ed. 3. 31.

(b) Acquittal by Owelty. See 22 Ed. 3. 3. he ought to shew Seisin or Tender of the Services, whereof he is acquitted 30 Ed. 3. 24. But in such Case, the Plaintiff ought to shew Seisin of the Services in the *Mesne*, either by himself, or his Feoffor, &c. and this Seisin is traversable. 18 Ed. 3. 19. 4 Ed. 2. *Mesne* 63. See 8 Ed. 3. 49. 5 Ed. 3. 56. 11 H. 4. 52. a good Case of Acquittal, that the *Mesne* and his Ancestors had acquitted the Tenant and his Ancestors, and all those whose Estates he hath: Adjudged 27 Ed. 3. 82.

(c) And therefore it seems, if the *Mesne* pleads not distrained, the Plaintiff shall recover the Acquittal notwithstanding, yet it seems he shall not be amerced, if he comes (not) at the Day. 30 Ed. 3. 22. 6 Ed. 4. 7. See 30 Ed. 3. 29, 30. 31 Ed. 3. *Judgment* 136. 14 Ed. 3. *Ibid.* 158.

(d) And it was accordingly so adjudged in both Points. 4 H. 6. 27. *Quare*, if there may be a good Forejudger in such Case, 10 H. 6. 26. and it seemed to *Strage* that there should, for the Judgment is no other, but that the *Mesne* shall be forejudged, and that the Tenant shall be attendant *Capitali Domino*.

(e) See accordingly, but then he ought to count according to his Case. See 13 Ed. 3. *Mesne* 12.

have

have a Writ of *Mesne* against him in the Reversion, because she hath her State by the Law.

17 Ed. 3. 15. (a) And if the *Mesne* hath paid the Services unto the Lord Paramount, H
 contr. per yet if the Tenant be afterwards distrained for those Services, he shall have a
 Thorp. Writ of *Mesne*. But it is a Question whether he shall recover Damages in
 38 H. 6. 12. that Writ. But it seemeth he shall have Damages, because the *Mesne* shall
 Prifot. recover Damages against the Lord, if he will put his Cattle in the Pound for
 50 Ed. 3. 23. the Tenant, and sue a *Replevin, &c.* and yet not distrained in his Default is a
 10 H. 6. 26. good Plea in a Writ of *Mesne*. And if he pay the Services, he is not di-
 34 H. 6. 47. strained in his Default: For if the *Mesne* grant unto the Tenant to acquit
 13 Ed. 4. 6. him after the Tenure made, he shall have a Writ of *Mesne* thereupon, as I
 7 H. 4. 18. conceive (b).
 18 Ed. 3. 19. And the Husband and Wife shall have a Writ of *Mesne* where they are di- I
 4 Ed. 4. 35. strained for the Lands of the Wife.

Billing. acc. (c) If the *Mesne* grant the Mesnalty for Life, and the Tenant attorn, the K
 14 Ed. 3. Tenant shall not have a Writ of *Mesne* against the Grantee for Life. But
 Mesne. Tenant in Tail shall have a Writ of *Mesne*: And Ancient Demesne is a good
 12 Ed. 3. Plea in a Writ of *Mesne* (d).

Mesne 12. (a) Note; Tho' the Services of the Mesne be
 10 Ed. 3. 58. not in Arrear, yet a Writ of Mesne lies, because
 Ibid. 21. the Tenant cannot plead *Rien arrear*. 39 Ed. 3.
 8 Ed. 3. 26. 34. *contra*. 17 Ed. 3. 15. See 39 Ed. 3. 19.
 Mesne 19. 11 H. 4. 52.

(b) Note; A. is Lord, B. Mesne, C. Mesne,
 and D. Tenant, A. distrains B. for Services, D.
 brings a Writ of Mesne against C. and recovers,
 C. brings a Writ of Mesne against B. and counts
 generally, B. pleads not distrained in his De-
 fault, and the other replies *contra*, and the spe-
 cial Matter is found *ut supra*, and that the Ser-
 vices of B. were in Arrear, but not the Services
 of C. and it was held, 1. That without some
 such special Mischiefe the Tenant in Service, *viz.*
 the Mesne shall not have a Writ of Mesne. 2.
 That in the Case of such Mischiefe he shall have
 it, and so each Mesne shall have it against the
 other, till it come to him in whom the Default
 is. 39 Ed. 3. 34. 39 H. 6. 31. 7 H. 4. 18.
 accordant. 3. That there ought to be a special
 Count, 20 Ed. 3. *Mesne* 14. or at least a special
 Replication, and that on the general Issue found,
 this Matter shall not aid him. 4. It seems that
 the one Mesne shall not recover Damages of the
 other before Execution, *ibid.* and 17 Ed. 3. 44.
 18 Ed. 3. 19. Yet it seems, that notwithstand-
 ing the Recovery against C. yet if B. had no
 Notice of the Distress, or if his Services were
 not Arrear, a Writ of Mesne does not lie against
 him by C. no more than it lies against C. with-
 out Notice where his Services were not in Ar-
 rear. For in that Case there is no Default in
 him. See 7 H. 4. 18. Also, if the Mesne's

Beasts are impounded for those of the Tenant,
 he shall have a Replevin of them, and so may
 each Mesne have, *&c.* And if any Mesne re-
 fuse to do so, *per Cur*, the Tenant shall have a
 Writ of Mesne. See 10 H. 6. 26. if the Avowry
 be abateable, or if no Services be due or Arrear;
 yet if the Mesne will not join with the Tenant
 on Request, a Writ of Mesne lies, for that the
 Tenant being a Stranger, shall not plead in
 Abatement of the Avowry.

(c) See 40 Ed. 3. 7. 12 Ed. 3. *Mesne* 11.
contra.

(d) So it is in Account against a Guardian in
 Socage, and in Replevin, 21 Ed. 3. 10. yet see
 in a Writ of Mesne on a Deed of Acquittal by
 the Tenant, the Defendant alleges that the
 Lands are held of the Manor of S. which is
 Antient Demesne; and it was not allowed, but
 he was put to answer to the Deed. 34 Ed. 1.
Antient Demesne 38. But see in a Writ of Mesne
 by Tenant in Dower, against the Heir who al-
 leges that the Tenements are held of the Manor
 of C. which is Antient Demesne; and although
 it was said, that one cannot have Process of
 Forejudging on Proclamations in a Court of An-
 tient Demesne, and that the Heir cannot be
 distrained there, for he has only the Services,
&c. yet it was awarded, that he should take
 nothing, and it was said, that this Plea shall be
 pleaded in a *Petit* Writ of Right in the Lord's
 Court, and that he shall make Protestation, *&c.*
 28 Ed. 3. 45. accordant. 30 Ed. 3. 12. *per*
Skipw.

- L** And a Writ of *Mesne* lieth against Tenant for Life where the Remainder is over in Fee: And the Writ of *Mesne* shall be maintainable against the Heir of the Mesne where his Ancestors have granted the Services of the Tenant by Fine, if the Tenant hath not attorned according to the Fine: For he shall not be compelled to attorn without granting Acquittal unto him: And if he grant Acquittal, he shall have Writ of *Mesne* upon the Grant; and yet it commenceth after the Tenour. 46 Ed. 3. 7.
28 Ed. 3. 95.
39 H. 6. 3.
28 H. 6. 6.
- M** And if the Tenant be distrained for the Relief of the Mesne, or for reasonable Aid, &c. he shall have a Writ of *Mesne* against him. 39 H. 6. 29.
38 Ed. 3. 34.
4 Ed. 2. Mesne
- N** If a Man be Tenant by the Curtesy of a Mesnalty, &c. if the Tenant be distrained, the Writ of *Mesne* shall be sued against him in the Reversion, and not against the Tenant by the Curtesy. *H. 4 Ed. 2.* 52. 14 Ed. 2.
Mesne 72.
contra. and
Note 84.
- O** A Seigniori is granted unto the Husband and Wife, and to the Heirs of the Husband, and in a *Per que servitia* sued by them, the Tenant will not attorn, unless they will grant to acquit him, &c. for which the Husband grants for him and his Heirs, to acquit the Tenant and his Heirs, and afterwards the Husband dieth; the Tenant may bring a Writ of *Mesne* against the Husband's Heir, during the Life of the Wife who was Tenant for Life, and good. *Quod vide H. 5 Ed. 3.* contr. 40 Ed.
3. 7. 12 Ed.
3. Mesne 11.
Mesne 52.
- P** And in the Time of *Ed. 1.* the Tenant brought a Writ of *Mesne*, because he did not acquit him of a Rent-charge demanded, &c. because he by his Deed bound him and his Heirs to warrant and acquit him, and it was maintainable. Mesne 56.
- Q** And an Abbot sued a Writ of *Mesne*, by reason of the Confirmation made unto him in *Frankalmoigne*, and it was maintainable. *H. 2 Ed. 2.* 5 Ed. 2.
Mesne 64.
- R** If a Man have Judgment to recover his Acquittal in a Writ of *Mesne*, if he be not afterwards acquitted, he shall have upon the Recovery a *Distringas ad quietandum* against the Mesne, if it be three or ten Years after the Judgment given; and that is given by the Statute of *Westm. 2. cap. 9.* And a Scire
facias against
the Lord.
14 Ed. 3.
Mesne 7.
- S** If the *Mesne* do acknowledge Acquittal by Fine, and after he sueth a *Scire facias* thereupon, and he appeareth not at the Return of the Writ, then shall issue a Writ of *Distringas ad quietandum*, &c. and an *Alias* and *Pluries*, &c. until he appear; and if he come upon the *Distringas*, and cannot plead any Thing, but that he ought for to acquit him, then the Plaintiff shall recover Damage against him.
- T** (a) And if the Ancestor do acknowledge an Acquittal in a Court of Record, the Tenant shall have a *Scire facias* against the Heir to acquit him, without other Specialty, &c. (b). 46 Ed. 3. 31;
1. ... 3.
Mesne 7.
49 Ed. 3. 31.
- V** And if a Man recover Acquittal of a Writ of *Mesne*, &c. he shall after have a *Distringas ad quietandum*; and if he do not appear, he shall be fore-

(a) But notwithstanding such Acknowledgment of the Acquittal, in a Writ of Mesne against the Heir, he may plead, that he had nothing in the Seigniori without shewing how, as that it was demised. &c. contra of his Father who acknowledged, &c. 28 Ed. 3. 93.
(b) So it is on a Recovery. 14 Ed. 3. Mesne 7.

judged.

[137.] judged by Default of his Mesnalty; and so if he appear, and it be found by
46 Ed. 3. 31. Verdict against him, he shall be forejudged (a).

Old N. B. 83. And a Man shall have a Writ of *Mesne* to acquit him of Suit unto a Hun- A
11 Ed. 3. dred, which the *Mesne* ought to do by reason of his Mesnalty, and not by
Br. Suit 4. reason of Resiency, &c. And the Procefs in a Writ of *Mesne* is Summons,
Ed. 3. 42, 83. Attachment and *Distingas*; and if the Defendant hath not any Thing in the
County by which he can be distrained, then the Plaintiff may surmise that he
hath Assets in another County, and pray a *Distingas* thither, and he shall
have it by the Statute; and upon that he shall be forejudged, &c. if he do
not appear, and the Writ be served and returned against him. But that is
given by the Statute: For at the Common Law he shall not have but Distress
infinite in the same County where the Writ was brought, and that is in the
County where the Land is; and at this Day he may chuse whether he will sue
the Procefs at the Common Law, Distress infinite in the County, or the Pro-
cefs which is given by the Statute, Summons, Attachment and the Grand Dis-
tress, which shall have Day to answer by such Times as two Counties may be
holden, in which the Sheriff shall make Proclamation that he come to answer
the Plaintiff; and if he do not come, and the Writ be returned, then he shall
be forejudged.

(a) If the Lord distrains the Mesne for more Services than the Mesne ought to pay, the Mesne is not bound to acquit the Tenant of the Surplufage. 39 H. 6. 31.

See 14 Ed. 3. *Mesne* 7. *A.* brings a Writ of Mesne against *B.* and counts of an Acquittance by Reason of Tenure in Frankalmoign, and Judgment was, that he should recover Damages, and a Precept went to the Sheriff, *quod distringat B. ad acquietand.* *B.* dies, a *Scire facias* goes against *C.* the Heir of *B.* to have Acquittal, *C.* not acknowledging that he had the Seignory at the Time, or that he had any more, &c. pleads, that he has nothing by Descent in Fee from his Father within the same Lands, &c. And Note; the Abbot in the said Recovery counted of Frankalmoign, *unde chartam*, &c. and therein these Points were agreed, *viz.*
1. That this Judgment is well enough to war-

rant a *Scire facias* for the Acquittal. 2. That no other Procefs of Execution lies against the Heir than a *Scire facias*, &c. 3. That the Plaintiff need not shew the Charter whereby he deraigned the Acquittal on the Recovery. 4. When an Acquittal is granted for one who is not Mesne, it is no Cause to have a Writ of Mesne but only of Covenant. 5. On an Acquittal which binds the Ancestor by Reason of a Tenure in Frankalmoign, Frank-marriage, or a Deed whereby the Acquittal is granted, if the Heir has the Mesnalty, he shall be bound to the Acquittal by Writ of Mesne, although he has nothing by Descent in Fee simple, from him by whom the Acquittal commences. But there it seems he may disclaim in the Mesnalty; *Quere*, wherefore the Abbot had Judgment, &c. and affirmed in a Writ of Error. 15 Aff. 9.

Writ de Plegiis acquietandis.

C **T**HE Writ *de Plegiis acquietandis* lieth, where a Man becomes Pledge or Surety (a) for another to pay a certain Sum of Money at a certain Day, &c. if the Party doth not pay it at the Day, &c. If he who becomes Surety be compelled to pay the Money, he shall have this Writ against him who ought to have paid the same. But it hath been a Question whether this Writ lieth without shewing a Specialty; and it seemeth reasonable that it be maintainable, although he have not any Specialty to prove it. For the Writ, as it seemeth, is given by the Statute of *Magna Charta*, cap. 8. which is, *Quod si Plegii voluerint, habeant terras & tenementa debitoris quousque sit his satisfact' de debito quod antea pro eo solverint.* And there is not spoken of any Writing made betwixt them; and if he have a Writing, then he may have Remedy thereupon by the Common Law, or by the Writ of Covenant, or Debt; and then that Statute needed not to have been made. And *Pasch.* 43 *Ed.* 3. 10. it is adjudged, that the Writ *de Plegiis acquietandis* lieth without any Specialty shewed thereof, and it seemeth good Reason: Because the Statute makes the Tie in that Case, and that appeareth by the Register, because Writs are given for the Executors of him who became Pledge, and against him who was the Debtor, because their Testator did not acquit his Sureties, &c. And this Writ is *Vicontiel*, and may be sued in the County before the Sheriff, or in the Common Pleas by a *Præcipe*; and the Form of the Writ is such:

The King to the Sheriff, &c. We command you, that you justice A. that justly, &c. he acquit B. of twenty Shillings, whereof he hath put himself in Pledge against C. and hath not yet acquitted him, as it is said, as he can reasonably shew that he ought to acquit him thereof, that we may hear no more Clamour thereupon for want of Justice, &c. And the Form of the Writ for the Common Pleas is such: *The King, &c. Command A. that justly, &c. he acquit B. of one hundred Marks, whereof he hath put himself in Pledge against C. and hath not yet acquitted him, as it is said, &c. and unless, &c.* Or thus for Executors: *Command A. and B. Executors of the Testament, &c. that justly, &c. they acquit E. of, &c. whereof he the said E. hath put himself in Pledge against D. and hath not yet acquitted him, &c.*

E And if a Man become Surety for another in the Exchequer to account for him, and doth not, he shall have a Writ against him to discharge him of the Account; and the Writ is,

The King, &c. Of acquitting A. of a certain Account, which the aforesaid E. for himself undertook to render before our Treasurer and Barons of the Exchequer for the Time in which he the said A. was Bailiff of the Liberty of Isabel Queen of

(a) So if *A.* and *B.* are bound to *C.* *corruumtim* & *divisim* for the Debt of *A.* yet being *B.* is not named Pledge. or *scilicet pignus* in the Obligation, this Writ does not lie for *B.* for both are Principals. *Pas.* 22. *Rot.* 1. See *Dyer* 257. and 370. accordant; yet a Jury may find *quod pignus se in pignus* for the Defendant against the Debtor.

Writ of Detinue.

England, *our Mother*, in the County of D. and whereof he hath put himself in Pledge against us in the Exchequer aforesaid, and hath not yet acquitted him, &c.

V 39 Ed. 3. 9. (a) And if a Man become Surety for another to pay a certain Sum of Money, or to do other Thing, &c. so long as the principal Debtor hath any Thing and is sufficient, his Sureties shall not be distrained, by the Statute of Magna Charta: And if they be distrained by the Sheriff, &c. they shall have a special Writ upon the Statute for to discharge them; and the Writ shall be such. 39 Ed. 3. 9. 40 Ed. 3. 5.

The King to the Sheriff, &c. A. and B. have shewed unto us, that whereas they became Pledges for C. against D. for a certain Sum of Money in which he the said C. was bound to the aforesaid D. and the said C. hath sufficient whereof he can pay the Debt aforesaid; nevertbeless you have distrained them the said A. and B. to pay the said Debt to the aforesaid D. And because it is unjust that any Pledges be compelled to the Payment of a Debt, so long as the principal Debtors have sufficient whereof they can render their Debt; We command you, that you distrain C. to pay the said Money, and that you thereupon permit his Pledges to have Peace, and that you cause their Beasts to be delivered without Delay, if you have taken any upon that Occasion. Witness, &c.

And it seemeth that this Writ lieth where a Man recovereth against the Sureties in the County, and the Sheriff distrains them to pay the Debt, where the Principal is sufficient: But if he sue the Sureties in the Common Pleas, where the Principal is sufficient to pay the Debt, &c. Now whether the Sureties may plead that, and aver that the principal Debtor is sufficient to pay it; or whether they shall have a Writ to the Sheriff not to distrain them, if the Principal be sufficient, *quare* of these Cases. And the Process in the Writ is Summons, Attachment and Distress, &c. (b).

39 Ed. 3. 9.
40 Ed. 3. 5.

Writ of Detinue.

[138.]
13 Ed. 3.
Detinue 55.
9 H. 6. 58.

A Writ of *Detinue* lieth, in Case, where a Man delivereth Goods or Chattels unto another to keep, and afterwards he will not deliver them back again; then he shall have an Action of *Detinue* of those Goods and Chattels; and so if a Man deliver Goods or Money put up in (c) Bags, or in a Chest, or in a Cupboard, unto another to keep, and he will not redeliver the Goods or

(a) See *Mag. Chart. c. 8. 11 Ed. 2. Debt 172. 39 Ed. 3. 9.* yet he shall not have this Advantage where he binds himself in Covenant. 48 Ed. 1. 51. *cont.* and yet he is Principal, by *Perk. 33.*

(b) And Note a Judgment in this Writ, *Quod acquietur*, and Damages assessed by the Court on Confession. *Dyer 257.*

(c) See 29 Ed. 3. 20. accordant, *Detinue* lies for a Bag and one hundred Pounds in *eadem бага*, without saying that it was enfealed; adjudged 18 H. 6. 20.

And Note; If *Detinue* be brought of a Chest enfealed with Charters, there, for that the Court cannot be apprised by the Writ, whether they concern the Realty or not, Process shall be made by *Capias*, &c. but when the Party appears, and counts, whereby it appears to the Court, that the Charters do concern the Realty, then he shall be permitted to appear by Attorney, &c. 29 Ed. 3. 19. 7 H. 4. 2. and 21 H. 6. 42. acc. with this Diversity. See 8 H. 6. 30. If one bring *Detinue* of a Chest with Charters, he ought

or the Money in the Bags; he to whom they should be delivered shall have a Writ of *Detinue* for those Goods, &c. But if a Man deliver Money not in any Bag or Chest, to redeliver back, or to deliver over unto a Stranger; now he to whom the Money should be delivered, shall not have an Action of *Detinue* for the Money, but a Writ of Account; because *Detinue* ought to be of a Thing which is certain; as of Money in Bags, or of a Horse, or of a hundred Cows, or such certain Things. And this Writ may be *Vicontiel*, and shall be sued before the Sheriff in the County if the Plaintiff please; or he may sue it in the Common Pleas; and the Form of the Writ in the Common Pleas is,

Bag with twenty Pounds, and by Martin, 4 H. 6. 1 and 2. If a Man bail twenty Pounds to rebail, and accompt. Contra, if it were, per accompt rendre. 6 Ed. 4. 11. Detinue of four Quarters of Barley, and doth not lay in Sacks; and yet good.

If a Man bails a Thing to bul to L. he shall have Detin^{us} by Pri^{or}, yet he hath no Property till Agreement, 39 H. 6. 44. Laiton, contr 7 H. 4. 13. Detinue was brought of a Detinue lieth,

Detinue lieth, and doth not lay in Sacks; and yet good.

The King to the Sheriff, &c. Command A. &c. that, &c. he render to B. one Charter which he unjustly detains from him, as he saith, and unless, &c. Or thus, That he render to B. one Box with three Writings obligatory, signed under the Seal of the aforesaid B. contained in the same Box. And the Rule in the Register is, That in the Writ de Chartis reddendis, the certain Number of Charters or Writings ought to be put. And a Man may have a Writ of Detinue of one Writing, and the Writ shall be, Command A. that, &c. he render to B. a certain Writing by which B. hath given and granted all his Goods and Chattels, lately being in the Manor of N. to I. of L. which he unjustly detains from him, &c. And the Form of the Writ in the County is such: The King to the Sheriff, &c. We command you, that you justice A. that justly, &c. he render to B. one Charter, or three Charters, or one Writing (a) obligatory or of Covenant, or Acquittance or Testament, or Writing, which he unjustly detains from him, as he saith, as he can reasonably shew that he ought to render the same to him, that we may bear no more Clamour, &c.

Note, that in 21 H. 6. 29. the Writ was Reddat bona & catalla; and declares of three Deeds; contr if of Obligations. 19 Ed. 3. Detinue 49. The Writ was Unam Chartam, and the Count of a Confirmation.

C And if a Man sue in any Court a Plaint of *Detinue* for any Charters which touch and concern Freehold, if it be not in the Common Pleas by the King's Writ, the Defendant may sue a Prohibition, to prohibit them, &c. and to surcease, &c.

The King to the Bailiff of I. of R. greeting: Whereas Pleas of Detinue of Charters or Writings touching Freehold ought not to be pleaded without our Writ in any Courts which have no Record, according to the Law and Custom of our Realm, and W. without our Writ impleadeth B. before you in the Court of your Lord aforesaid of R. for that, "That be the said B. render to the aforesaid W. three Charters," as we have received Information; We command you, if it be so, that then you do absolutely supersede that Plea from being further holden before you in

ought to count that the Chest was locked, for otherwise he shall have a general Writ of Charters. 39 Ed. 3. 7. contr. 14 H. 4. 30. and then if it be not a Chest locked, he ought to shew what Charters specially. 11 H. 6. 9, 39. 14 H. 6. 4. See 14 H. 6. 1. the Defendant came in by Exigent; the Plaintiff counts of a Chest with Charters, and of one Charter in special; the Defen-

dant pleads to the Charter *non Detinet*, and to the Residue wages his Law instantly, and then was permitted to make an Attorney.

(a) Note; The Writ may be *Bona & catalla*, and he may count of three Tallies; but if he counts of an Obligation, the Writ ought to be special. 21 H. 6. 29.

the Court aforesaid without our Writ, and that you tell the aforesaid W. on our Behalf, that he may obtain for himself our Writ of Detinue of the Charters aforesaid against the said B. if it shall seem to him expedient. *Witness, &c.*

And the Plea may be removed by *Pone* out of the County at the Plaintiff's D Suit, without Cause shewed in the Writ; and at the Suit of the Defendant he ought to shew Cause in the *Pone*: And this Clause shall be in the End of the Writ, *Let Execution of this Writ be done, if the Cause be true, otherwise not, &c.*

38 H. 6. 24. And if a Man find my Goods which I have lost, I shall have a Writ of E
25 Litt. *Detinue* of them.

39 H. 6. 24. And if a Man giveth Lands in Tail by Deed indented, and the Donee dieth F
9 Ed. 4. 52. without Heir, the Donor shall have a Writ of *Detinue* for that Part of the Deed indented which the Donee had. 18 Ed. 3. *Detinue* 48. 31 H. 6. 13. 6 H. 7. 3.

And so if Lands be given to two Men and the Heirs of one of them; if the Tenant for Life dieth, he who hath the Fee shall have a Writ of *Detinue* for that Deed.

7 Ed. 4. 20, 26. (a) If a Man make a Feoffment in Fee of his Land by Deed, yet the G
Moiety. Feoffee shall not have the Charters concerning the Land, but the Feoffor
18 Ed. 4. 14. shall keep them, if he do not give them to the Feoffee; but against a Stranger
the Feoffee shall not have the Feoffee shall have an Action of *Detinue* for those Charters which concern
this Writ the Lands, if he cannot make Title by the Feoffor, or those who claim Title
against a by the Feoffor.
Stranger.

10 Ed. 4. 9. And the Heir in Tail shall have a Writ of *Detinue* against the Discontinuee H
4 H. 7. 10. for the Deed of Entail by which the Land was given. 18 Ed. 4. 15. 44 Ed. 3.
9 Ed. 4. 52. 1. 10 Ed. 4. 9.

9 H. 6. 58. And if a Man maketh a Feoffment in Fee of the Land which is Fee-simple, I
The Heir his Heir shall have the Charters which concern the same Lands, and not the
ought to make Executors of the Father. 9 Ed. 4. 53. 10 Ed. 4. 9.

If a Man make a Lease for Years, and afterwards confirms his Estate in K
Land, other- Fee, the Heir of the Feoffee shall have the Deed of the Lessor for Years, as
wise the Exe- well as the Deed of Confirmation, because that the Deed doth make the Con-
cutors shall firmation good: And so of every Deed which maketh his Title, or a Release,
have them. or the like, without which his Title shall not be sure, and he shall have an
19 H. 6. 41. Action of *Detinue* for them. 9 Ed. 4. 53.
acc.

9 Ed. 4. 52. And the Heir shall have a *Detinue* of Charters, although he hath not the L
9 H. 6. 15. Land; as if I be infeoffed with Warranty, and I infeoff another with a War-
10 Ed. 4. 9. ranty in Fee, my Heir shall have a *Detinue* of that Deed by which I am in-
39 Ed. 3. feoffed, because he may have Advantage of the Warranty. 9 Ed. 4. 53.

Br. Chart 38. And if my Father be disced, and dieth, I shall have a *Detinue* for the
10 Ed. 4. 9. Charters, although I have not the Land, and the Executors shall not have the
10 Ed. 4. 14. Action for them.
The Lord by
Escheat shall
have *Detinue*
for Charters.

(a) See one Parcener may have the Charters though out of Court, he shall be excused against
which concern her Purparty only, and shall have the other, and so in Dower against two, who
Detinue thereof against her Sister on a special plead *Detinue* of Charters. 21 Ed. 3. 8. per
Count. See also in *Detinue* of Charters by two, *Manby*.
if the Defendant delivers them to one of them,

And

M And if a Man have Goods delivered to him to deliver over to another, and afterwards a Writ of *Detinue* is brought against him by him who hath Right unto the Goods; now if the Defendant, depending the Action, deliver the Goods over to whom they were bailed to him for to deliver, the same is a good Bar in the Action, because he hath delivered them according to the Bailment made unto him. [139.]

And after Divorce made betwixt the Husband and the Wife, the Wife shall have a Writ of *Detinue* for the Goods given with her in *Frank-marriage*, which see *M. 35 Ed. 1.* And the Process in *Detinue* is Summons, Attachment and Distress. For *Detinue* 61. 13 H. 3. Prohibition 21. See 44 C.

Writ de Recto de Custodia Terræ & Hæredis.

B THE Writ *de Custodia Terræ & Hæredis* lieth where the Tenant holdeth of his Lord by Knight's Service, and dieth in his Homage, and a Stranger entreth into the Land, and taketh the Body of the Heir: The Lord of whom he holdeth the Land shall have a Writ of *Custodia Terræ & Hæredis*; and the Writ is such (a):

The King to the Sheriff, &c. Command A. that, &c. he render to B. the Wardship of the Land and Heir of C. which belongs to him the said B. for that the aforesaid C. held his Land of him by Knight's Service, as he saith, &c. and unless, &c.

(b) Otherwise of the Heir of the Land. *Command A. that, &c. he render to B. and C. his Wife, W. the Son and Heir of E. the Wardship of whom belongs to them the said B. and C. for that the aforesaid E. held his Land of the aforesaid C. &c. Or thus, Of L. the Father of the aforesaid C. whose Heir she is, by Knight's Service, as it is said, &c. and unless, &c.*

C And a Writ of the Lands (c) only is such: *Command A. that, &c. he render to B. the Wardship of one Yard-land with the Appurtenances in R. which belongs to him, for that C. held that Land of him by Knight's Service, as it is said, &c.*

(a) And Note; This Writ lies against a Guardian by Nurture, or the Grantee of a Ward at Will. See 24 *Ed. 3.* 96. Yet it does not lie against the Grantee of a Ward for Years, if it be not he who first abates, 28 *Ed. 3.* 96. it lies against him who claims as Bailiff, 38 *Ed. 3.* 18. it lies against a Guardian for Nurture, in case there is not any Guardian in Chivalry; but if one seised as Guardian in Chivalry, grants him, (i. e. the Ward) over to B. to be nurtured, it does not lie against B. 12 *H. 4.* 19. *Non-tenure* of the Body is a good Plea in a Writ of Ward of the Body. 10 *H. 6.* 12.

(b) Note; This Writ ought to be brought where the Lands lie, 29 *Ed. 3.* 3. and if the Defendant has nothing in the same County, the Plaintiff shall have a *Distingas* (after a *Testatum*) into any other County, and Nonage of the Heir

shall not be inserted in the Writ, but in the Count, 12 *H. 4.* 16, &c. and if the Heir comes of Age pending the Writ, or dies, yet the Writ shall not abate, *Quare.* 40 *Ed. 3.* Brief 776. 34 *Ed. 1.* Brief 853. 9 *Ed. 4.* 50. 40 *Ed. 3.* 7. 21 *Ed. 3.* 42. 15 *Ed. 3.* Brief 680. *Perk.* 13.

(c) Note; A Writ of Ward of Lands for several Parcels of several Tenures shall abate, by *Rolf*; for he ought to have several Writs, 3 *H. 6.* 53. *contra* in a Writ of Ward of the Body, or of the Lands; adjudged, *Ibid.* But if it be for the Land, and also for the Body, and the Count is of several Tenures, the Writ shall abate. 46 *Ed. 3.* Brief 619. 17 *H. 6.* *Guard* 117. 6 *Ed. 4.* 48.

Note; The Writ is general, and therefore the Plaintiff may abridge his Demand 14 *H. 6.* 3.

or thus, *which belongs to him the said B. by reason of a Demise which A. (of whom the aforesaid C. held that Land by Knight's Service) made thereof to him the said B. as he saith, &c.*

And if a Man have a Wardship by reason of a Ward, and it is taken from D him, the Writ shall be thus: *That he render to B. l. the Son and Heir of C. the Wardship of whom belongs to him by reason of the Wardship of the Land and Heir of R. (of whom the aforesaid C. held that Land by Knight's Service) being in the Custody of him the said B. as he saith, &c.*

(a) And if the Lord Paramount will shew a Writ of Right of Ward for E the Services and Rent, and the Heir of the Mesne, he may have a general Writ of the Land and Heir, if he will, or a special Writ thus:

Command A. that, &c. he render to B. the Wardship of ten Shillings Rent, and of the Heir of C. which belongs to him, for that the aforesaid C. held of him the Tenement from whence that Rent issueth, by Knight's Service, as he saith, &c.

And this Writ may be sued in the County before the Sheriff by a Justices, F and then the Writ is such:

We command you, that you justice A. that, &c. he render to B. the Wardship of the Land and Heir of C. which, &c. as he saith, as he can reasonably, &c.

And the Plaintiff may remove the same by a *Pone* without Cause shewed, G and the Defendant ought for to shew Cause in the *Pone*, as he shall do in a *Replevin*. 11 H. 2. *Gard* 141.

Infra I.

And it appeareth by the Register, that the Guardian in Socage shall have H the Writ of Right of Ward of the Heir alone, or of the Land alone, or of both; for the Heir thus:

The King, &c. Command A. that, &c. he render to B. W. the Son and Heir of C. the Wardship of whom belongs to him the said B. for that the aforesaid C. held his Land in Socage, and the aforesaid B. is next Heir of him the said C. as he saith, &c.

And there is the like Writ for the Land. And the Reason and Cause that he shall have this Writ seemeth to be, because that for the Land he cannot have other Remedy, if he cannot enter into the Land: And yet I conceive that Guardian in Socage shall have a Writ of Right of Ward for the Land, because he is accountable unto the Heir for the same, which proves he hath no Right unto the Land, but as Bailiff.

Infra I.

And the Guardian in Socage shall have a Writ of Ward for Cause of Wardship, where his Guardian ought to have another Infant in Ward, because he is next of Blood unto him to whom the Inheritance cannot descend; and the Writ is such:

The King, &c. Command A. that, &c. he render to B. the Wardship of the Land and Heir of C. which belongs to him the said B. by reason of the Wardship

(a) Note 1 And see 13 Ed. 3. *Gard* 38. 19 Ed. 3. *Gard* 40. 1 H. 4. 2. 11 H. 4. 82. 8 Ed. 3. 8. Ejectment, Intrusion or Right of Ward brought, supposing that he held the Rent of him, and good. See 22 Ed. 3. 10. he may have a Writ *de Custodia Terræ & Heredis*, and count of the Land and Rent, &c. See 10 H. 6. 12. a Supposal (or Demand) of Rent held good;

for by *Baldw.* If the King grants a Rent-charge to B. to be held of him, and after grants the Services to C. now B. holds the Rent of C. See 14 H. 6. 24.

See a general Writ for the Wardship of the Heir of *Cestuy que Use*, and a special Count, *Dyer* 84. a.

of I. the Son and Heir of D. (who held his Land in Socage) being in the Hand of him the said B. for that the aforesaid C. held his Land in Socage, and the aforesaid B. is next Heir of him the said I. as he saith, and unless, &c.

I (a) And it seemeth, that a Writ of Right, *De communi custodia*, was at the Common Law, and as well for Guardian in Socage for the Body of the Heir, as for Guardian in Knight's Service. But the Writ of Ravishment of Ward was not at the Common Law for the Guardian in Knight's Service, but the same was given by the Statute of *Westm. 2. cap. 35.* And by the Equity of that Statute Guardian in Socage shall have a Writ of Ravishment of Ward as well as Guardian by Knight's Service; and by the same Reason he shall have a Writ of Right of Ward at the Common Law, as Guardian in Socage shall have.

1 Ed. 3. 20.
20 Ed. 3. 65.
25 Ed. 3. 52.
17 R. 2.
Brief 634.
N. B. 95.
3 Ed. 2.
Gard 133.

K And if the Mesne hath two Daughters, one within Age, and the other of full Age, and dieth; and the Lord hath the Wardship of her within Age, and afterwards the Tenant dieth, his Heir within Age, now the Lord Paramount, and the Sister of full Age who is one of the Mesnes, shall have a Writ of Right of Ward in this Form:

12 R. 2.
Gard 106.

Command A. &c. that, &c. he render to B. one of the Daughters and Heirs of W. and to P. of E. the Wardship of the Land and Heir of R. which belongs to them the said B. and P. for that the aforesaid R. held his Land by Knight's Service of the aforesaid B. and of M. the Sister of the said B. the other Daughter and Heir of him the said W. within Age, and being in the Wardship of the aforesaid P. as they say, and unless, &c.

L And it appeareth in the Register, that the Writ *de Ejectione Custodiæ* lieth for the Land, and for the Heir together, for the Writ is such (b):

11 H. 4. 64.
65. If the
Ejection of

Ward be brought of Land only, the Party must shew the Certainty of the Land; but if it be of the Body and Land, the Writ general, *de terris & hæred.* is good. 22 Eliz. Dyer 299. It lieth not but of Land only.

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, [140.] &c. B. to shew wherefore, whereas the Custody of the Land and Heir of C. until the lawful Age of the Heir aforesaid belongs to him the said A. for that the said C. held his Land of him by Knight's Service (c), and he the said A. was a long while in peaceable Seisin of the same Wardship, the aforesaid B. forcibly ejected him the said A. from that Wardship, the said Heir being within Age, as he saith: And have there the Summoners and this Writ, &c.

If he who ejects aliens to another, yet he may have this Writ against him who ejected him, and yet the

Party shall recover Land to his Writ, 12 H. 4. 10. by Hankford; so if one eject the Ejector, he who was first ejected shall not have this Writ, no more than one shall have Trespass, &c. against the second Trespassor. 39 Ass. 2.

(a) And he shall account to the Heir for the Damages which he recovers, and for that the Deforcceor shall be discharged against the Heir. 27 Ed. 3. 79. See *Kelw.* 131.

of A. and afterward A. agrees and takes the Profits and aliens, he shall be said the Ejector, and Ejection *de Gard* lies against him, and the Plaintiff shall recover the Ward and his Damages. 38 Ed. 3. 18. Ejection *de Gard* brought against two, the Death of the one shall not abate the Writ. 12 H. 4. 10. The Tenant of the Ward ought to be named in the Writ. 2 Ed. 2. 779. *Quære.*

(b) See the contrary adjudged, 14 Ed. 3. Brief 316.

(c) Yet it is not sufficient for the Defendant to traverse the Tenure, &c. without shewing Cause of Justification. 10 H. 6. 20. *per Passon.*

Note; If the Bailiff of A. ejects B. to the Use

(a) Another

Writ of Right of Ward.

(a) Another Writ for the Land only, where he hath the same by Grant of A the Guardian, thus:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, &c. wherefore, whereas the Wardship of one Yard-land with the Appurtenances in D. until the lawful Age of I. Son and Heir of C. belongs to him the said A. by reason of the Demise which R. of whom the aforesaid C. held his Land by Knight's Service, made thereof to him the said A. as it is said, and the said A. was a long while in full and peaceable Seisin of the same Wardship, he the said B. forcibly ejected the said A. from the Wardship aforesaid, the aforesaid Heir being within Age, as he saith, &c. (b).

Another Writ when a Man hath a Ward of the King's Grant, and he grant- B eth the same over unto another, then thus, as above:

By reason of the Demise which C. (who had that Wardship of the Commission of Lord Edward lately King of England, our Predecessor, of whom the aforesaid R. held his Land by Knight's Service) made thereof to him the said B. &c. and the said B. &c. Or thus: If E. shall make you secure, &c. then summon B. as well to answer (c) us as the aforesaid E. &c. wherefore, whereas we committed to the aforesaid E. the Wardship of the Lands and Tenements which were A. of C. deceased, who held of us in Chief, and which were in our Hand by reason of the Minority of P. Cousin and Heir of the aforesaid I. to have the same with all Things belonging to that Wardship, until the lawful Age of the aforesaid Heir, and he the said E. was a long while in full and peaceable Seisin of the said Wardship by reason of our said Commission, he the said B. (the said Heir being within Age) forcibly ejected the said E. from the Wardship of one hundred Shillings Rent with the Appurtenances in H. as he saith, &c.

13 H. 4. 17.

(d) And the Guardian in Socage shall have a Writ *de Ejectione Custodie*, as C appeareth by the Register; and by the like Reason, as well as he shall have a Writ of Ravishment of Ward for the Body, he shall have a Writ of Ejectionment of Ward for the Land (e).

And if a Man have the Patronage of an Abbey or Priory, and hath Right D to have the Temporalties during the Time of Vacation of them, if he have the Possession thereof, and be ousted, he shall have a Writ *de Ejectione Custodie*; and the Writ shall be such:

To shew wherefore, whereas the Custody of the Priory of B. in the Vacations of the same Priory belongs to him the said A. and he the said A. was a long while in full and peaceable Seisin of the said Custody in the last Vacation of the said Custody in the last Vacation of the said Priory, the aforesaid B. forcibly ejected the said A. from that Custody.

And by the Register it is said, that the Writ of Right may be sued *de Custodia Priorat'* in Time of Vacation, &c. thus:

(a) Note; The Writ *de Custod. Terræ & Heredis* is general, but *de Custod. Terræ tantum* is special. 11 H. 4. 64.

(b) *Et blada sua cepit*, &c. abated the Writ, because it included Treſpafs. 11 Ed. 3. Brief 471.

(c) He shall have a general Ejectionment of Ward, and not a special Writ on the Case,

which concludes in *contemptum nostrum*, &c. and such a Writ shall abate. 11 H. 4. 65.

(d) And so is 26 Ed. 3. 65. 13 H. 4. 17. and Note; it is there held to be no Issue, to say that the Ancestor did not hold of him whom the Plaintiff supposes to be Lord.

(e) See *contra* 16 Ed. 3. *Wass* 100.

The King, &c. Command, &c. that, &c. he render to B. the Custody of the Priory of N. &c.

(a) And that is grounded upon the Statute of *Magna Charta, cap. 6. Quod omnes Patroni Abbatiarum, &c.*

And there is another Writ of Ward for the Body, which is called a *Writ of Ravishment of Ward*; and that Writ lieth as well for Guardian in Socage, as for Guardian in Knight's Service.

E And if a Man have one in Ward, because his Ancestor held of him by Knight's Service, and the Ward is ravished and taken from him, he shall have the Writ of Ravishment of Ward.

F (b) And so shall the Grantee of the Ward, or his Executors, if he be taken from them; and the Form of the Writ for the Lord of whom the Ancestor of the Ward held, is such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then put, &c. B. that he be before our Justices, &c. or before us (such a Day) wheresoever, &c. to shew wherefore he ravished and carried away I. the Son and Heir of C. found at N. being under Age, the Marriage of whom belongs to him the said A. against the Will of him the said A. and against our (c) Peace; and in the mean time do you diligently inquire where be the Heir is in your Bailiwick, and take him wheresoever he shall be found, and keep him safely and securely, so that you may have him before our Justices, or thus, before us, &c. at the aforesaid Time, to be restored to which of them the said A. and B. he ought to be restored: And have, &c.

(d) And if the Heir be ravished and carried from County to County, then the Writ shall be thus:

The King to the Sheriff, &c. A. hath complained to us, that B. hath ravished C. the Son and Heir of L. being under Age, and being in his Wardship at E. in the County of Lincoln, and hath carried him from that County unto I. in your County, against the Will of him the said A. and against our Peace; And therefore we command you, that you take the said Heir wheresoever you shall find him in your Bailiwick, and keep him safely and securely, so that you may have him before our Justices at, &c. (such a Day) which Day the said A. hath, against the said B. to be restored to whom of Right he ought to be restored: And have, &c.

G And the Form of the Writ for the Guardian in Socage is thus:

The King, &c. If A. shall make you secure, &c. then put, &c. B. &c. to shew wherefore, whereas the Wardship of the Land and Heir of C. until the lawful Age of him the said Heir, belongs to him the said A. because that the aforesaid C. held his Land (e) in Socage, and the aforesaid A. is nearer to the Heir of him

(a) See that a Writ of Trespass for a Ward was at Common Law, and at this Day, it is in the Plaintiff's Election to pursue the Statute or the Common Law, as by a Writ of *Oyer and Terminer*. 29 Ed. 3. 37. adjudged. See 29 Aff. 35.

(b) Note; In Ravishment of Ward, the Defendant may traverse, but not without making a Title in himself, when put out of Possession. See 9 H. 6. 10, 61. otherwise if he pleads only to Writ without saying, *Et in Custodia sua existit*. 9 H. 6. 6.

(c) Without saying *vi & armis, i. e.* if the Writ be *cujus Maritagium ad ipsam pertinet rati-*

one Dimissionis; contra if it be according to the Statute, there the Writ is good. 17 Ed. 3. Brief 823.

(d) So Note; The original Writ ought to be brought in the County where the Ravishment is supposed, and not in the County to which he is esloigned, and this Writ shall issue to the Sheriff. Dyer 289. Fitzb. Case; see the Stat.

(e) Without saying *cujus Maritagium ad ipsum pertinet*, as 7 R. 2. Brief 634. and yet if he be married by the Ravisher, there shall be a Recovery of the Value, and he shall be accountable to the Heir for the same. 26 Ed. 3. 65.

Writ of Right of Ward.

the said C. and he the said A. was a long time in full, &c. with Force and Arms he took and carried away the aforesaid W. B. the Son and Heir of the aforesaid C. found at N. being under Age, and in the Wardship of him the said A. and other Wrongs to him did, to the great Damage of him the said A. and against our Peace: And have there the Names of the Pledges and this Writ. Witness, &c. Or thus: With Force and Arms ravished, and hath married him without the Licence and Will of him the said A. to the great Damage, &c.

And if the Infant be in the Custody of the Lord, and during his Nonage he enter upon the Lord, and oust him of the Land which he ought to have in Ward, then the Lord shall have a Writ of Intrusion of Ward against him; and the Writ shall be such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, &c. I. the Son and Heir of C. to shew wherefore, whereas the Wardship until the lawful Age of the aforesaid Heir belongs to him the said A. by reason of a Demise which L. of whom the aforesaid C. held his Land by Knight's Service, thereof made to the aforesaid A. and whereof A. was in full and peaceable Seisin, the aforesaid I. being under Age, intruded himself into the Land aforesaid, and detains from the aforesaid A. that Wardship, to the great Damage and Grievance of him the said A. &c. as he saith, &c. And have, &c. Or thus: To shew wherefore, whereas the Wardship of the Manor of T. with the Appurtenances, until the lawful Age of the aforesaid I. did belong to him the said A. by reason of a Demise which B. (to whom H. of whom, and Alice his Wife, the aforesaid C. held that Manor by Knight's Service) made thereof to the aforesaid A. &c. and the said A. being in full, &c. the aforesaid I. while he was under Age, intruded himself into the Manor aforesaid, and hath hitherto detained from the aforesaid A. that Wardship, to his Damage, as he saith: And have, &c.

And the Writ lieth where the Tenant holdeth of a Man and his Wife by Knight's Service in the Right of the Wife, and the Tenant dieth, his Heir within Age, and the Husband granteth the Wardship of the Land unto another, who granteth it over to another, upon whom the Heir intrudeth, &c.

And if the Lord have the Custody of the Heir within Age, and tender him a convenient Marriage, and he refuseth it, and intrudeth, then the Lord shall have a Writ against him for to recover the (a) Value of the Marriage, and also to recover the Land, which shall be such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, &c. B. &c. to shew wherefore, whereas the Marriage of the aforesaid B. belongs to him the said A. for that the aforesaid B. held his Land of him by Knight's Service, and he the said A. ostentimes tendered to the aforesaid B. while he was under Age in his Wardship, a competent Marriage without Disparagement, according to the Form of the Statute thereof provided by the Common Council of our Realm, he the said B. refusing that Marriage (the aforesaid A. not being satisfied for his Marriage) hath intruded himself into the Lands and Tenements, and for his Marriage denies, &c. to the great Damage, &c.

(a) The Successor brought such a Writ, supposing the Tenure of a Tender by an Intrusion in the Time of his Predecessor, without any Agreement, &c. with the Abbot himself that was Plaintiff; and ruled good, *per Cur.* 11 H. 4. 82. But Note; It seems better if the Writ

supposes that no Agreement was made with him or his Predecessor.

And Note; One may have an Ejectment of Ward against the Heir himself. 32 Ed. 3. Brief 347. *Quere Bro. Jurisdia.* 23. 11 H. 7. 9. and 31 Aff. pl. 26. *contra* 7 H. 6. 12. 21 Ed. 4. 43.

And

2 H. 7. 9.
31 Aff. 26.
Br. Alliance 321.

Vide 8 Eliz.
Dyer 255.
the Tender
traverfed.

E And it appeareth by the Writs abovesaid, That the Guardian shall have a ^{24 H. 3.} Writ of Intrusion of Ward against the Heir as well at his full Age, as during ^{Ward 149.} his Nonage.

F There is another Writ *De valore maritagii* for the Lord or his Executors against the Heir, without speaking of any Intrusion made by the Heir into the Land. And the Writ is such :

The King to the Sberiff, &c. If A. &c. shall make you secure, &c. then summon, &c. wherefore, (a) whereas the Marriage of him the said L. (&c. as in the last Writ, until) of our Realm, the aforesaid L. refused that Marriage, and when he came to his full Age, refused to satisfy the aforesaid A. for the same Marriage, and yet unjustly refuseth, to the great Damage, &c. and against the Form of the Statute, &c.

G (b) And if the Heir be in the Lord's Custody, and doth marry himself within Age, without the Assent of the Lord, and when he cometh of full Age, he entreth upon the Lord, and puts him out of the Land, then the Lord shall have a Writ of Forfeiture of Marriage against him, for the double Value of the Marriage. And the Writ shall be such :

H (c) *If A. shall make you secure, &c. then summon C. the Son and Heir of D. that he be before our Justices, &c. to shew wherefore, whereas the Marriage of him the said C. together with the Wardship of one Acre of Land with the Appurtenances in N. belong to him the said A. by reason of a Demise which L. (who had that Wardship of the Demise of F. to whom G. demised it, of whom the aforesaid D. held his Land by Knight's Service) made thereof to the aforesaid A. and he the said A. ostentimes tendered to the aforesaid C. while he was under Age and in his Wardship, a competent Marriage without Disparagement, according to the Form of the Statute thereof provided by the Common Council of our Realm, he the said C. refusing that Marriage, hath married himself without the Licence and Will of him the said A. and hath intruded himself into the Lands aforesaid (the aforesaid A. not being satisfied for the Marriage aforesaid) and denies to satisfy him the said A. for the said Marriage, to the great Damage of him the said A. and against the Form of the Statute aforesaid, as he saith: And have, &c. and summon, &c. Witness, &c.*

I And that Writ lieth where the Lord granteth the Wardship of the Heir and Land of his Tenant unto F. who granteth the same Heir and Land unto L. who granteth the same over unto the said A. the now Plaintiff, who tendereth Marriage unto C. and he refuseth the same, and marieth himself during his

(a) Note; This Writ does not lie till the Heir be out of Ward by full Age, or by making him Knight; so that if the Heir dies before such full Age, &c. the Value is lost. 6 Co. 75.

(b) To entitle one to have the double Value, see 16 Ed. 3. *Action sur le Stat.* 14. but he need not count, so 14 Ed. 3. *ibid.* 16, 17.

(c) See 16 Ed. 3. *Action sur le Stat.* 14. 18 Ed. 3. 18. and yet the Statute of Merton, cap. 6, does not give an Action but only a Retainer. 2 Ed. 3. *Action sur le Stat.* 23. that he has Election, and if he chooseth this, he shall not re-

tain the Land. 33 Ed. 3. *ibid.* 31. but see *contra.* Temp. Ed. 1. *ibid.* 36.

Note; He ought to shew in his Count, that the Feme was tendered, 28 Ed. 3. 92. and there, though the Lord after the Tender, &c. renders on the Land, and accepts the Relief of the Heir, yet he shall have the Forfeiture of the Marriage. Also, although the Heir be married by the Ravisher, the Lord has his Election to have either Ravishment of Ward or Forfeiture of the Marriage. 3 Ed. 2. *Action sur le Stat.* 27.

Note for Form of the Writ, 14 Ed. 3. *ib.* 17.

Nonage, and at his full Age entred into the Land, the Marriage not satisfied, &c.

And otherwise for the Lord against the Tenant himself, thus: K

If A. shall make you secure, &c. summon, &c. B. the Son and Heir of C. that he be before our Justices, &c. to shew wherefore, whereas the Marriage of the aforesaid B. belongs to him the said A. for that the aforesaid C. held his Land of him by Knight's Service, and he the said A. hath frequently tendered a competent Marriage without Disparagement, &c. to the aforesaid B. while he was under Age, he the said B. hath refused to admit that Marriage, and hath married himself without the Licence and Will of the aforesaid A. to the great Damage, &c.

[142.] And the Lord may have such a Writ of Forfeiture of Marriage against L the Heir of the Mesne, if he marry during his Nonage, and enter into the Mesnalty, or take the Rent and Services of the Tenant Paravail, and the Writ shall be general, as if he were Tenant Paravail, &c. not making Mention of the Mesnalty.

If a Man be Tenant in Tail, the Reversion to the King, and the King doth A license him to alien in Fee, and to take back an Estate unto himself and his Wife in Tail, the Remainder to his right Heir, and he maketh such Feoffment, and taketh back an Estate unto himself and his Wife in Tail, the Remainder to his right Heirs, and dieth, his Heir within Age; the King, notwithstanding his Licence, shall have the Wardship during the Life of the Wife, for that the Licence doth not give him Power to alien the King's Reversion, &c. And when the Reversion cannot be discontinued, the Estate-Tail cannot be discontinued, but by his Death the Heir may enter into the Land, and so the King may in his Right (a).

Vide Dyer 8. & 12 & 13 2. b. C. 2 part 92. 11 H. 7. 19. 34 Ed. 1. pl. 129. 36 Ed. 3. Gard 9. 1 Ed 3. 3. 36 H. 8. Leafes 18. contr. (b) If a Man have Lands for Life, the Remainder in Fee unto another, B and he in the Remainder dieth, his Heir within Age, he shall not be in Ward during the Life of the Tenant for Life; because that during his Life, the Tenant for Life is Tenant to the Lord Paramount, although the Land be holden by Knight's Service. And the Guardian shall put out the Termor who holdeth for Years of the Lease of his Tenant.

(c) And the Statute of *Marlebridge* in a Manner proveth he may so do. C And there are many old Books to prove the same by Judgments that are given; and it seemeth reasonable that it should be so, by the ancient Title which the Lord hath, when he reserved such Services upon his Feoffment, to have the Wardship if he dieth, the Heir being within Age.

C. 3 part 35. 41 Ed. 3. 18. Br. War. 20. (d) And if the Tenant be disseised and dieth, his Heir being within Age, D the Lord shall seize the Ward, and enter into the Land upon the Disseisor in the Right of the Heir.

33 H. 6. 16. Priset. (e) But if the Tenant doth infeoff his Son during his Nonage, who doth E Homage unto the Lord, and afterwards the Tenant dieth, the Heir within

(a) *Stamf Prærog.* 56. 40 *Aff.* pl. 36. 21 *Aff.* pl. 15. 21 *Ed.* 3. pl. 58.

(b) So if Lands are leased to the Baron and Feme, and to the Heirs of the Baron who dies. 28 *Ed.* 3. 93.

(c) 5 *H.* 7. 3, 6. 14 *H.* 7. 22. 15 *H.* 7. 7. 33 *H.* 6. 42.

(d) *Vide infra* K.

(e) 36 *Ed.* 3. *Gard* 11. 4 *Ed.* 3. 20. 33 *H.* 6. 16. *contr.* 31 *Ed.* 3. *Gard* 55, 255. *Mag. Chart.* c. 3. 3 *Ed.* 2. *Avowry* 189. 4 *Ed.* 3. 20. But (F.) see 27 *Ed.* 3. 19. 8 *Ed.* 2. 96. 18 *Ed.* 3. 29. *Quære* 97. 8 *H.* 3. *Ward* 139. *contra.*

Age, the Lord shall not have the Wardship of him, because he hath accepted him for his Tenant in the Life of the Father. But it appeareth by *Magna Charta*, That the Lord shall take Homage of the Heir before he have the Wardship of him; but that is after the Death of the Ancestor, and not in the Life of the Ancestor, and so was the Law taken in old Books.

F If a Man purchase Lands by Feoffment which are holden severally of divers Lords by Knight's Service, and afterwards dieth, his Heir within Age, that Lord who first getteth the Ward shall have him, because there is no Priority; but if he purchase Lands which are holden by Knight's Service of one Lord, and afterwards purchase Lands by Knight's Service of another Lord, and dieth, his Heir within Age, that Lord shall have the Wardship of the Heir of whom the Land first purchased was holden, for he holdeth of him by the more (a) ancient Feoffment and Priority, than he holdeth of the other Lord.

And if a Man hold of the King by Posteriority, and holdeth Lands of another Lord by Priority, and afterwards dieth, his Heir within Age, the King shall have the Wardship of his Body by his Prerogative, not having Regard to the Priority or Posteriority.

And if a Man hold of the King by Posteriority, and of (b) another Lord by Priority, and afterwards the King granteth the Seigniorie unto the Queen for Life, and afterwards the Tenant dieth, his Heir within Age, the Queen shall have the Wardship of the Body, not having Regard unto the Posteriority, because that the Reversion of the Seigniorie doth remain in the King. 24 Ed. 3. 66. *Stamf. Prærog.* 11.

But if the King hath granted the Remainder of the Seigniorie in Fee unto a Stranger, then it seemeth the Queen shall not have the Wardship of the Body, for the Seigniorie of Posteriority, &c. and Priority is changed by the Feoffment of the Tenant of the Land. And if he make a Feoffment in Fee of the Land which he holdeth by Priority, and take back an Estate again of

14 Aff. Br. Anife 192. Com. 133. 36 Ed. 3. Gard 11. 31 Ed. 1. Gard 155. Br. Fealty. Good Bar in Forfeiture of Marriage, in 7 Ed. 2. Action for Stat. 31. So of Land in Use, 21 H. 8. B. Prerogative 92. C. 5 Part 36.

Quære, If Plenarty be a good Plea against the Queen, where the Reversion is in the King. 18 Ed. 3. 13. Stanford, Prerogative 13.

(a) Although he comes to the Seigniorie or Honour of which the Tenement is held by Litcher or Purchase, the King shall have the Ward, notwithstanding the Priority, because he is the Chief Lord, *de quo omnia Tenementa tenentur*. See *Braet.* 87. 5 Ed. 3. 4. adjudged. 24 Ed. 3. 31, 65. adjudged. See 12 H. 4. 25.

(b) See 21 Ed. 3. 41. but more fully *F. Prærog.* 16. A. holds of B. by Priority, and of the King as of the Honour of *Berkhamsted* by Posteriority; the King grants the Honour of B. to Prince E. whom he creates by the same Letters Patent Duke of *Cornwall*, *Habend' eidem Duci & ipsius & hæredum suorum Reg' Angl' filiis primogenitis & duci loci ducibus in Regno Angliæ hæreditario successoribus*, &c. ita quod ab eodem Ducatu nullatenus separentur, vel aliquibus aliis quæ duci loci Ducibus per nos vel hæredes nostros donentur, &c. with a Proviso, that if any happen to take by Force of the said Grant, &c.

Quod dictus Ducatus ad nos vel hæredes nostros Reges Angliæ revertantur retinend' quousq', &c. de hujusmodi filio apparen', &c. A. dies, his Son within Age, and it was demurred and doubted in Law, who should have the Ward; and by *Wilby*, the Prince shall have it; and for this see 24 Ed. 3. 31, 38, and 65. accordant. But there the Case was on a Grant for Life to the Queen, Remainder to the Prince and his Heirs Males Kings, &c. and so there was a Reversion in the King, and therefore it seems by that Book, that the King shall have his Prerogative; *contra*, if the Remainder had been limited over in Fee-simple. See 12 Ed. 3. *Prærog.* 23. And it seems by 24 Ed. 3. 66. that if a Seigniorie be granted to A. for Life, Remainder to the King in Fee; the Tenant for Life shall have the Prerogative, because he holds in Right of him who has it.

the

If he make a Feoffment and this done to his Use; quere if the Priority be gone. 2 Ed. 2. Fitz. Gard 2. acc.
3 Ed. 3. Gard 19. 14 Ed. 3. Gard 37.
33 Ed. 3. Gard 12. cont.
11 Ed. 3. 115.
This not Law.

21 Ed. 3.
Gard 41.

Tenant in Tail grants his Estate of a Manor unto which

an Advowson if the Church

the same, now he holdeth the same Land of that Lord by Posteriority, whereas he held it before of him by Priority. But if the Lord of whom the Tenant holdeth by Priority, grant his Seigniorie unto another in Fee, and take back again an Estate in the Seigniorie to him in Fee, &c. yet the Tenant holdeth of him by Priority, as he held before, because the Pleading of Priority is to say, that he holdeth of such a Man and his Ancestors, or of those whose Estate he hath in the (a) Seigniorie *per antiquius Feoffamentum*, &c. than he holdeth the other Land, so that the Feoffment of the Land doth make the Priority. And if the Tenant do (b) forejudge the Mesne, of whom he holdeth by Priority, &c. yet he shall hold by Priority of the Lord Paramount, as he held of the Mesne before, &c.

The Mayor and Aldermen and Chamberlains, by the Custom of London, G shall have the Custody of any Orphan in the City, and if they commit the Custody of such Orphan to another, he shall have a Writ of Ravishment of Ward against him who taketh the Ward out of his Possession.

And if the Guardian marry the Heir after the Age of fourteen Years, and H afterwards the Heir is taken by a Stranger, the Guardian shall not have a Writ of Ravishment, &c. because he hath had the Effect of his Marriage.

If a Man have a Ward in the Right of his Wife, although the Wife dieth, I yet the Husband shall have the Ward, because it is a Chattel vested in him. 10 H. 6. 11. 30 Ed. 3. 6.

is appendant, the Church void; Tenant in Tail dieth, the Grantee shall have the Advowson. So void during the Term, and the Term expire. 9 Ed. 3. *Quare impedit* 18.

(c) Where the Tenant maketh a Feoffment by Collusion, and the Lord accepteth the Services of the Feoffee, then he shall not have the Wardship of the Tenant's Heir, nor shall oversee the Collusion. K

[143.]
But the Custodie Use of a Seigniorie shall not have Guard, for the

And if a Man at this Day maketh a Feoffment in Fee to his Use, and the Lord accept the Services of the Feoffee; yet if the Feoffor who hath the Use dieth, his Heir within Age, the Lord shall have the Wardship of his Heir by the Statute of 4 H. 7. cap. 17. (d)

Feoffees before 27 H. 8 were Lords.

(a) See *Rast. Entr.* 387. *Prædicti A. the Father of the Infant & antecessores sui & illi quor' Stat' ipsi habuerunt in eodem Manerio de S. tenent' idem Maner' de S. de eodem G. & antecessoribus suis, quorum Statum illi habuerunt in Dominico ejusdem Manerii de S. per servicium militare per antiquum Feoffament', &c.* See 3 Ed. 3. Gard 19. adjudged, accordant 11 Ed. 3. Gard 115. per *Shard.* 21 Ed. 3. 41.

(b) This seems not Law, for when the Tenant forejudges the Mesne, the Services due to the Mesnalty are gone, and he is become Tenant to the Lord *de novo*, so that he shall hold of the Lord by the Services of the Mesne; so

that if the Tenant ought to hold in Chivalry, and the Mesne in Socage; now the Tenant himself shall hold in Socage of the Lord, and so it is agreed, that by the Forejudger he is now Tenant to the Lord Paramount by Posteriority. 11 Ed. 3. Gard 115. in a Writ of Ward by the Bishop of Exon, against R. B. for the Body of W. Son of B. de Berceley. See 33 Ed. 3. Gard 12. per *Shard.*

(c) 31 Ed. 1. Gard 33, 155. 12 Ed. 3. Gard 33. 36 Ed. 3. Gard 11. 33 H. 6. 16. 29 Ed. 3. 48. 8 Ed. 3. 284.

(d) And thereon he shall have a general Writ and a special Count. *Dyer* 8, 9.

- A And if a Man lease Lands for Term of Life, the Remainder to the Husband and Wife in Tail, the Remainder in Fee to the Heirs of the Husband, and the Husband and Wife die, his Heir within Age being Tenant for Life, his Heir shall not be in Ward (a).
- B If the King's Tenant giveth Lands in Tail without the King's Licence, and the King accepteth the ancient Tenant for his Tenant, and the Services, and afterwards the Donee in Tail dieth, his Heir within Age, the King shall have the Wardship of him, as seemeth by the Statute of 34 Ed. 3. cap. 15. And this Acceptance of the Services shall not conclude the King; for the King shall not be concluded, &c. if he have Matter to shew which may serve him. And yet in Anno 4 H. 6. it is adjudged contrary; and therefore *quare* the Law in that Case. 27 H. 8. 26.
Fitz herbert
contra.
Vide 34 & 35
H. 8. Dy. 54.
4 H. 6. 19.
- C And the Lands of the Wife within Age shall be in Ward, although her Husband be of full Age. *Litt. 22. b.*
And if a Woman be past the Age of fourteen Years at the Time of the Death of her Ancestor, she shall not be in Ward. N. B. 96. b.
26 H.
- D A Committee of the King shall not have a Ward by reason of the Ward, but the King shall have the same, because the King remaineth Guardian, &c. and the Heir shall sue Livery. 35 H. 6.
Gard 14, 90.
- E (b) If a Bishop have Title to have a Ward, and doth not seize him in his Life-time, and dieth, the Successor shall have that Ward, and shall seize him, &c. Otherwise it seemeth if the Bishop had seized him. See *Dyer 277. contr.* 2 H. 4. 19. ac.
40 Ed. 3. 14.
cont. 10 Eliz.
Dyer 277.
the Executors
of the Prede-
cessor shall
have the Ward.
- F If the Heir Female be married by the Lord before her Age of fourteen Years, and afterwards the Husband dieth, the Heir Female shall not be married again by the Law, &c. And by that same Reason he shall not have a Writ of Ravishment of Ward, if another Man do ravish her afterwards. *Bro. Quare imp. 47. Litt. 23.*
- G (c) If the Grandfather have a Son, and the Son taketh a Wife, and have Issue, and dieth, the Mother of the Issue shall have the Wardship of the Child which is her own Child, and not the Grandfather, although the Issue may have the Land which ought to descend to him by the Grandfather, and although that the Mother shall not have the Land. *Hill. 31 Ed. 3. Bar. 257. Brief 327. 30 Ed. 3. 17.* Lit. 25.
C. 6 Part
22. b.

(a) But after his Death he shall be in Ward, adjudged 24 Ed. 3. 33. for the Heir in such Case is in by Descent, and therefore if he becomes Tenant in Demesne or by Fiction of Law, as by Resceit or Aid Prayer, he shall have his Age, see 24 Ed. 3. 69. adjudged, and 25 Ed. 3. 42. Lands held *in Capite* were given to A. for Life, Remainder to B. his Son in Tail, Remainder to the right Heirs of A. who died, B. shall pay Relief to the King. 26 Ed. 3. 71. *Dyer 308. 40 Ed. 3. 9.* The Grandfather was Lessee for Life, Remainder to the Father in Tail, Remainder to the right Heirs of the Grandfather of Lands *in Capite*. The Father

dies, and the Grandfather and Son levy a Fine to 7. S. and take back an Estate to the Ayl for Life, Remainder to the Son and his Wife in Tail, Remainder to the right Heirs of the Grandfather; the Grandfather surrenders, &c. the Son shall pay Relief. *Dyer 235.*

(b) 40 Ed. 3. 14. 2 H. 4. 16. 11 H. 4. 80. 7 H. 4. 35.

(c) See *Ratcliff's Case*, 7 Co. 83. The Mother shall have the Custody of her Son, or Daughter and Heir Apparent, against a Deforcior, but not against a Guardian in Chivalry, as in the Case of a Father. 9 Ed. 4. 53.

11 H. 7. 12. If an Infant recover Land by a Writ of *Dum non fuit compos mentis*, he shall **H**
 contra. not be in Ward; and so it seemeth if (a) he do recover by a Formedon or
 7 H. 4. 12. ac. other Action Auncestral, where he could not enter, because his Ancestor did
 Br. Gard 98. not die Tenant to the Lord, &c. nor in his Homage. *Stamf. Prærog.* 8.
 43 Ed. 3. 18. And a Man may seize his Ward, although he be Apprentice or in Service **I**
 contra. of another. 4 *Eliz.* 259. 14 *H.* 8. 14, 32. 8 *Ed.* 4. 7. 27 *Aff.* 21.

But if the Tenant maketh a Feoffment by Collusion, the Lord ought to **K**
 recover the Land by a Writ of Right of Ward, before he shall have a Writ
 for the Ravishment of the Ward, &c. (b). 12 *H.* 4. 13.

If a Man be Tenant by the Curtesy of a Seignory, the Heir shall not be in **L**
 Ward during the Life of the Tenant by the Curtesy, &c. *Bro. Gard* 110.

But if a Man have Issue a Son, and afterwards he taketh a Wife who hath
 Lands holden by Knight's Service, and hath Issue by her, and afterwards the
 Wife dieth, if the Husband be not Tenant by the Curtesy of the Land, then
 the Husband's younger Son shall be in Ward during the Life of his Father,
 &c. *N. B.* 99. 30 *Ed.* 1. *Gard* 156.

30 *Ed.* 1. If an Infant be married in the Life of his Father within the Age of Con- **M**
 Gard 156. ac. sent, and afterwards the Father dieth, the Infant being within the Age of
 but shall not Consent; the Lord shall have a Writ of Ravishment of Ward for the Infant,
 have Forfeiture upon because he may perhaps disagree unto the Marriage.

(c) And the Lord of the Villain shall have the Wardship of the Land, and **N**
 Refusal. the Body of the Heir of a Villain, if he seize him before the Lord, &c. other-
 7 *H.* 6. 12. wise not of the Land.
 In Case of the King.

If Lands descend unto the Wife, and afterwards the Wife hath Issue by **O**
 40 *Aff.* 7. her Husband, and dieth before the Husband entreth, so that he shall not be
 Br. Vill. 31. Tenant by the Curtesy; the Issue shall (d) be in Ward, if he be within Age,
 and if he be not Heir Apparent to the Husband; and so if the Issue by the
 Wife were a Woman, and within Age, where the Husband hath a Son living,
 that Issue within Age shall be in Ward, during the Life of the Husband which
 is its Father.

31 *Ed.* 1. And *Pasch.* 31 *Ed.* 3. the Opinion was, That if the Husband have not
 Gard 154. Land which shall from him descend to his Issue, that then his Issue shall be
 2 *Ed.* 2. in Ward for the Lands of his Wife, if he were within Age, &c. in the Life
 Gard 3. of the Husband: But it seemeth that the Law is not now taken to be so.

26 *Ed.* 3. 65. Guardian in Socage did grant the Wardship over to a Stranger, and the **P**
 33 *Ed.* 3. Grant awarded good. *Hill.* 26 *Ed.* 3. & *Hill.* 31 *Ed.* 3.

Gard 161. If an Infant enter for a Condition broken, upon a Feoffment made by his **Q**
 N. B. 92. Ancestor, he shall be in Ward for that Land, if it be holden by Knight's
 11 *H.* 7. 12. Service. *Dyer* 304. b. 32 *Ed.* 3. *Gard* 32. 7 *Eliz.* 304. b. *Ant.* 90. H.
 12 *H.* 7. 10.
 6 *H.* 4. 4.

(a) Tenant in Tail, with a Remainder in Fee, aliens in Fee, and dies without Issue, the Heir of him in Remainder recovers in a Formedon, he shall not be in Ward; by *Dyer, Trin.* 3 *Eliz.*

(b) Or Right of Ward for the Body. 12 *H.* 4. 13. It seems he may seize the Body immediately. *Kilbo.* 120.

Note; A Tenant for Life of a Seignory shall have Wardship, but not Eſcuage. 6 *Ed.* 2. *Gard* 122.

(c) 40 *Aff.* pl. 17. *Eſcheat* 16. *Gard* 131. *Litt.* 25.

(d) Be it Male or Female. 31 *Ed.* 3. *Gard* 154. 8 *Ed.* 2. *Treſpaſs* 235. 33 *H.* 6. 55.

(a) And

R (a) And a Man or a Woman shall have a Writ, *Wherefore he ravished his or her Son and Heir*: Or, *Wherefore he ravished his or her Daughter and Heir*; or *ravished his or her Cousin and Heir*, &c. and that by the Common Law. Vide 2 & 3 Eliz. Dyer 190.

S And the Proceſs in a Writ of Ward appeareth by the Statute of *Marlebridge*, cap. 7. viz. Summons, Attachment and Diſtreſs (b).

And in a Writ of Right of Ward, if he cometh not at the Diſtreſs, then the Proclamation ſhall be awarded, that he ſhall have Day by which two or three County Courts are holden in the mean time, before the Return thereof; and if the Writ be returned ſerved, and he do not appear, he ſhall loſe the Wardſhip, and the Plaintiff ſhall by Judgment recover the ſame (c).

Writ of Escheat.

THE Writ of Escheat lieth where the Tenant who hath an Estate in Fee-ſimple of any Lands or Tenements, and holdeth them of another, and the Tenant dieth ſeiſed without Heir General or Special, the Lord ſhall have the Writ of Escheat againſt him who is Tenant of the Lands or Tenements, after the Death of his Tenant, and by this Writ he ſhall recover the Land, becauſe he ſhall have the ſame in lieu of his Services. 36 Ed. 3. 17. 3 Ed. 3. Bar. 257. Foundership ſhall not eſcheat nor be forfeited, becauſe it is tied

to the Blood. Alſo Rent-charge ſhall not eſcheat by Death, contra by Attainder. 24 Ed. 3. 12. Br. Escheat. 9 H. 7. 37. 7 Ed. 4. 11, 120. If Abbey or Pariſh Church be diſſolved, the Lands which they held ſhall eſcheat. 21 H. 7. 89. If a Man holdeth two Acres by ſeveral Services of one Lord, he ought to have two Writs of Escheat.

A But if Tenant in Tail die without Heir, he in the Reverſion ſhall not have [144.] a Writ of Escheat, but a Formedon in the Reverter.

But if a Man be Tenant in Tail of Land, the Remainder to his right Heirs, and dieth without Heir, then the Lord of whom the Lands were holden in ſame, which eſcheats, Tenant in Tail dieth without Iſſue, he in the Reverſion ſhall have Escheat of the Land, becauſe he is come in lieu of the Seigneur. See 40 Ed. 3. 33 Ed. 3. Escheat 9. but by this Opinion he ſhall not have Escheat, becauſe the Reverſion was out of him at the Death of the Tenant. Tenant in Tail of a Seignior grants the

(a) 21 H. 6. 14. 32 Ed. 3. *Card* 32. *Ant.* 90. H.

(b) 13 Ed. 4. 12. *Bro. Faux Lat.* 81. See *Dyer* 304. And by ſome, if the Sheriff returns *Nihil*, &c. yet a *Diſtringas* with Proclamation ſhall iſſue. 11 H. 6. 3. *contra* 21 H. 6. 56.

(c) See 12 H. 4. 16. 29 *Aff.* 35. See 24 Ed. 3. 44. Judgment given and an Inquiry of Damages, &c. afterward, and therefore Error brought. 42 Ed. 3. 1. an Inquiry of Damages, and whether the Heir were married, &c. and Judgment given afterwards. See 24 Ed. 3. 49. Judgment for the Ward inſtantly; and *Note* the

the Cauſe: A Reſummons in a Writ of Ward was ſued by the Heir of the Plaintiff, againſt the Executors of the Defendant, who plead that the Heir was of full Age in the Teſtator's Life-time, and that before this Writ purchaſed they had fully adminiſtred; and the Plaintiff, *per Chafeament* replied, that he had not Aſſets, &c. and he had Judgment inſtantly for the Ward, and the Inqueit was taken on the Iſſue for his Damages; and afterwards the Defendant could not be eſſoined, becauſe the Original was determined. 24 Ed. 3. 49, 53.

Tail, shall have a Writ of (a) Escheat, because the Tenant in Tail was Tenant unto the Lord for the Fee-simple that he had in the Land, &c.

3 H. 2.
Entr. 38.
7 H. 4. 17.
contr. if the
Diffeisor die or
alien, for these
are Tenants
by Title.

But if a Man be Tenant for Life, the Remainder in Fee unto a Stranger B and his Heirs, and afterwards the Stranger dieth without Heir, and afterward the Tenant for Life dieth; the Lord shall not have a Writ of Escheat, because the Tenant for Life was Tenant to the Lord, and not he in the Remainder, &c. But there the Lord shall have a Writ of Intrusion, if a Stranger enter on the Land after the Death of Tenant for Life.

5 Ed. 4. 14.
32 H. 6. 27.
37 H. 6. 1.

(b) And if the Tenant be disseised, and afterwards dieth without Heir, &c. C it seemeth the Lord shall have a Writ of Escheat, because his Tenant died in the Homage. And in that Case he shall have a Writ of Right of Ward, if the Tenant die, his Heir being within Age, and by the like Reason he shall have a Writ of Escheat. 2 H. 4. 8. con. 15 Ed. 4. 14. cont.

If the Tenant dieth without Heirs, and afterwards the Lord dieth; the D Heir of the Lord shall have a Writ of Escheat for to recover the Land, &c. for that Escheat made, and shall give a Right unto the Lord to have the Land.

26 Ed. 3. 4.
The Son
brought Es-
cheat, suppo-
sing that the
de eo tenet.

And this Writ shall descend from the Lord unto his Heir, &c. and the E Forms of the Writs of Escheats are divers: One where the Tenant is a Bastard, and dieth without Heir, and then the Writ is such:

Tenant held of his Father, whose Heir he is, and Exception taken, because it ought to be Quod

The King to the Sheriff, &c. Command A. &c. that he render to B. ten Acres of Land with the Appurtenances in N. which C. held of him, and which ought to revert to him the said B. as his Escheat, for that the said C. was a Bastard, and died without Heir, as it is said, &c.

And if he be not a Bastard, (c) but dieth without Heir, then the Writ is, F *And which ought to revert to him the said B. as his Escheat, for that the aforesaid C. died without Heir; or thus, for that the aforesaid C. committed Felony, for which he was hanged; or, for which he (d) was outlawed, or, for which he abjured the Realm, &c. and unless, &c.* And the Form of the Writs for the Heir appear in the Register.

(a) See *contra per Scot.* 12 Ed. 3. See 15 Ed. 4. 13. 3 H. 6. Escheat.

(b) See 17 Ed. 3. 64. *per Thorp.* So if Tenant makes a Lease for Life, by *Hankf.* 2 H. 4. 8. See 7 H. 4. 17. 32 H. 6. 27. If Tenant makes a Lease for Life, and then dies, having Issue B. who dies without Heir, and afterwards Tenant for Life dies; if a Tenant abates, the Lord may have Intrusion; but by *Hankf.* he shall not have Escheat; *contra Fitz.* For the Words of the Writ are true, that he is dead without Heir, and that he holds of him; but agreed by all, that if he brings Escheat, he cannot have this

Writ, supposing that the Lessor dies without Heir, though he was the last that was seised in Demesne; for it is a good Plea to say that he had Issue B. who survived him; and it is not material whether B. was seised or not. See 11 H. 4. 11. 7 H. 5. 9.

(c) Or committed Felony. 19 Ed. 3. Brief 251.

(d) And the Outlawry for Felony shall not be reversed, without suing a *Scire facias* against the Lord mediate and immediate, 9 H. 4. 3. accordant, and in this Writ, Error in the Outlawry cannot be shewn. *Dyer* 67.

G And the King shall have a Writ of Escheat for Lands in *London*, if the Tenant died seised of Lands there without Heir, because the Lands in *London* are holden of the King; and this Writ he may sue in the King's Bench or in the Common Pleas.

H And if a Man be beheaded for Felony, or die after Judgment, before that he be executed by the Officer; yet the (a) Writ shall say, *Pro quo suspensus fuit, &c.* and it is not material whether that he be hanged or not.

Or if after Judgment he be delivered to the Bishop, go beyond Sea

34 Ed. 3. Escheat 10. contrary if he stand mute. 4 Ed. 4. 18. 22 H. 6. 38. Newton, If a Man without Licence, and taketh Wife there, and hath Issue and dieth, the Land shall escheat.

And the Course in the Register was, That if a Man were attainted of Felony, that the King did send a Writ to the Sheriff to inquire what Lands and Tenements he had, and which he held of the King, and which of other Lords, and by what Service, and what they were worth by the Year *ultra re-prias*, and that he certify the same. But the same is altered by the Statute of 28 *Eliz.* 3. *cap.* 9. which is, that a Commission be made out unto the Sheriff to take the Inquest: And also there was another Writ appointed by the Register, directed unto the Sheriff to inquire whether such House or Land which *W.* had, who was attainted of Felony, were seised into the King's Hand for a Year and one Day, or not, and of whom they were holden, and who had the Year, Day and Waste, and ought to answer the King for the same, and that he send the same before the King, &c. and now in Place of these Writs, there ought to be a Commission granted to inquire thereof, directed to certain Persons by the Statute aforesaid.

48 Ed. 3. 34. Where the Tenant is Ut-lage of Felony; the Lord hath Election to have a Writ of Escheat; sup-posing that the Tenant was Utlage, or that he died without Heir.

K And if a Man be attainted of Felony, and another enters into the Land, and taketh the Profits, and if it be found by Commission that such a Man, who was attainted of Felony, had such Lands and Tenements, and that the Lands and Tenements have been in the King's Hands for one Year and a Day; and that *B.* hath taken the Profits for that Year and Day, and also hath had the Waste thereof; and that the Lands are holden of *F.* Then *F.* shall have a Writ unto the Sheriff for to deliver him Seifure of the Lands, &c. *Salvo jure cujuslibet.*

And he who hath taken the Profits for the said Year and Day, shall answer the King for the same: And thereby it appeareth, that the King shall not have but the next Year and Day, which cometh after the Attainder, and that he who took the Profits for that Year, shall answer the King for the same.

49 Ed. 3. 12.

L And if Lands be holden of an Abbot, and the Tenant die without Heir, &c. the Successor shall have a Writ of Escheat, and the Writ shall suppose, *Ought to revert to him the now Abbot as his Escheat, for that the aforesaid, &c. died without Heir, &c. as it is said; and unless, &c.*

(a) See *Rot. Parl.* 8 Ed. 2. *M.* 5. *ubi Decol-latur per R. & Concil.* If the Appellee be killed in Battle, the Judgment is to be given against him; otherwise the Lord cannot have the Es-cheat. 8 Ed. 1. *Judgment* 22;

(a) And the Tenant for Life of the Seigniorie shall have a Writ of Escheat, M or Tenant in Dowry, or by the Curtesy, and also the Lord shall have a Writ of Escheat of the Mesnalty, which is but a Rent Service, and shall demand the Rent by the Writ.

7 H. 6. And the King shall have a Writ of Escheat of Tenements within Cities and N
Escheat 18. Boroughs, which are holden of him in Fee-farm. 3 H. 6. 32. 49 Ed. 3. 5. a.
21 H. 7. 30. (b) And if a Man have Title to have a Writ of Escheat, if he do not ac- O
But by the Count he shall cept Homage of the Tenant, he shall not afterwards have the Writ against
suppose the Land was holden. him, because he hath accepted him his Tenant; and so if he accept Fealty
11 H. 4. 82. of him. But if he do accept the Rent of the Tenant, that shall not bar him
of his Writ of Escheat, and the Process are Summons, Grand Cape and Petit
Cape, as in any other *Præcipe quod reddat*. But it is otherwise if he accept (c)
Rent from the Heir of the Disseisor. *Co. Lit.*

Writ of Covenant.

[145.] WRITS of Covenant are of divers Natures; for some are merely per- A
sonal, and some Covenants are real; to have a real Thing, as Lands
and Tenements; as a Covenant to levy a Fine of Land is a real Covenant:
But a Writ of Covenant which is more personal is, where a Man by Deed
doth covenant with another to build him a House, &c. or to serve him, or
to infeoff him, &c. and he doth not the same according to the Covenant;
then he with whom the Covenant was so made shall have Writ of Covenant
against him. And there is a Note in the Register, which is this; *A Writ of
Covenant ought not to be made according to Law Merch. without a Deed, because
no Plea of Covenant can be without Deed, and every Man ought to be judged
according to his Deed, and not by another Law; and the Form of the Writ is
such: The King to the Sheriff, &c. Command A. that, &c. he keep his Covenant*

(a) And if the Tenant for Life dies before Entry, he in Reversion shall have a Writ of Escheat. *Kelw.* 114. See 7 R. 2. *Escheat* 4. 33 Ed. 3. *Dower* 137. *contr.* 8 Ed. 2. *Escheat* 12.

(b) 13 Ed. 1. *Avowry* 235. The elder Son receives Homage of the Middlemost, seized in Fee, who dies without Issue, the younger Brother shall have the Land, and the Issue of the elder Brother, if not born at the Time, shall have it, &c. See 11 Ed. 3. *Dower* 63. where Acceptance of the Homage by the Wife, after the Death of her Husband, shall oust her of Dower of the Tenements. See 5 H. 7. *Droit* 66. Acceptance of Homage from the Tenant, shall bar in a Writ of Right. See 17 Aff. 3 the Disseisor accepts Homage from the Disseisor, it

shall bar him for his Life, but not his Heir. 26 Ed. 3. 72. Tenant dies without Heir, the Lord enters and makes a Feoffment, and takes back an Estate for Life; a Bastard of the Tenant enters and infeoffs G. of whom the Lord accepts the Homage; and it is demurred in Law, whether this has not excused (estopped) him to have the Land; the Doubt is, because the Seigniorie was absolutely gone by the Entry and Acceptance of the Fealty. in Bar of the Writ of Entry *sur Disseisin.* 13 Ed. 3. *Bar.* 353. *Vide ant. E.*

(c) And Note; Acceptance of the Rent shall not make a Change in the Avowry, because it may be received as by the Hands of his Bailiff, &c. but it is otherwise of Homage or Fealty. See 4 H. 6. 21. *Co. Lit.*

with B. &c. touching the Damage and Loss by the Breach of Trust and Default of W. the Son of R. Apprentice of the aforesaid B. committed within the Term of six Years, to be restored to him the said B. and unless, &c.

C And if a Man make a Covenant by Deed to another and his Heirs, to infeoff him and his Heirs of the Manor of D. &c. Now if he will not do it, and he to whom the Covenant is made dieth, his Heir shall have a Writ of Covenant upon that Deed; and also his Assigns shall have a Writ of Covenant where the Covenant is made to him and his Assigns.

18 Eliz. Dy.
217. Sir Anthony Cook's Case.

D And so Executors shall have a Writ of Covenant, of a Covenant made unto their Testators for a personal Thing, and these Writs appear in the Register.

And it appeareth by the Register he may sue a Plaint of Covenant in the County or in the Hundred Court, &c.

And that he shall have a *Recordare* to the Sheriff for to remove the same out of the County into the Common Pleas, as it shall be done in a Replevin sued there.

And if the Plaint of Covenant be sued in the Hundred, or in other Court of other Lord, he shall have an *Accedas ad Curiam* directed unto the Sheriff to remove the Plaint into the Common Pleas (a).

F And the Writ of Covenant for Executors is such: *Command I. that, &c. with A. B. and C. Executors of the Testament of N. the Covenant made between him the said N. and W. of E. for him the said W. to continue with the aforesaid N. as an Apprentice for seven Years, and after that Term compleated to serve him the said N. for so long Time as he the said W. should cloign himself from the Service of the same N. within the said Term, which said Covenant to fulfil and keep he the said W. by his Writing bound himself, &c. and unless, &c. And the said Executors shall make you secure, &c.*

G And if a Man make such Covenant by Word; or to build him a House, &c. and he doth it ill; then the Party shall have an Action upon the Case for the ill doing of it (b).

If a Man covenant by Word to do such a Thing for a certain Sum of Money, and receive one Parcel of the Money, and Day is appointed for the Payment of the rest: Now if he do not according to his Covenant, he shall have an Action on the Case against him for not doing of it, because it is a Bargain betwixt them (c).

H And a Writ of Covenant lieth against Executors for a Covenant broken of the Testator, and the Writ shall be, *Command I. and R. Executors of the Testament of E. that, &c. they perform to W. and A. his Wife, the Covenant made*

V. 48 Ed. 3. 2.
10 H. 7. 18.
32 H. 6. 31.

(a) A Man covenants, that neither he nor his Heir shall erect any Mill in such a Place, and afterwards he erects a Mill, and an Action of Covenant is thereupon brought by the Heir, and well, 4 H. 3. 57. and so it is if the Lessor ousts the Lessee and dies, or Tenant in Tail leases for Years and dies, and the Issue ousts the Termor, he shall have Covenant against the Executors. 47 Ed. 3. 22. 48 Ed. 3. 2. but 38 Ed. 3. 24.

is, that he shall recover the Whole in Damages against the Heir, if he has Assets by Descent, *per Knivvet and Skipro.*

W. W. See 21 H. 6. 55. 2 H. 4. 3. 14 H. 6. 18. 20 H. 6. 34.

(b) 21 H. 7. 4. 3 H. 6. 36. 20 H. 6. 34. 14 H. 6. 18. 21 H. 6. 55. *contra.* 42 H. 4. 3. *contra.* 11 H. 4. 33. *contra.*

(c) 32 H. 6. 32.

between her the said A. and the aforesaid E. for that he the said E. his Heirs or Executors, should render to C. the Son and Heir of I. when the same C. should come to full Age, his reasonable Account of the Issues of all the Lands and Tenements which the aforesaid I. held in the Town of N. in the County of N. the Wardship of which he the said E. had of the Demise which the aforesaid A. (to whom the Wardship of the Lands and Heir aforesaid belonged, for that the aforesaid I. held his Land in Socage, and the same A. was nearer to the Heir of him the said I.) made thereof to him the said E. &c. and unless, &c.

(a) And if a Man have Lands for a Term of Years, and covenanteth to I leave them in as good a Plight as he found them, although that he pulleth down the Houses, the Lessor shall not have an Action of Covenant before the End of the Term: For the Covenant hath Relation thereunto, &c. But if he do Waste in Wood, Covenant lieth; for he cannot repair it. *Ed. 1. Covenant 29.*

12 Ed. 3.
Covenant 2.
40 Ed. 3. 5.

If a Man make a Lease by Deed Poll, if the Lessor put out the Lessee, he K shall have a Writ of Covenant upon the Deed Poll (b). But if a Stranger, who hath no Right, put out the Lessee, he shall not have a Writ of Covenant against the Lessor, because he hath no Remedy by Action against the Stranger. But if the Stranger enter by eigne Title upon the Lessee, then he shall have an Action of Covenant against the Lessor, because he hath no other Remedy.

26 H. 8. 3.
acc.

38 Ed. 3. 24.
Skipwith and
Knevit, he
shall recover
Damages
only, 24 Ed.
3. 24. he shall
recover his
Term.
20 Ed. 3.
Covenant 3.
Vide 9 Eliz.
Dyer 257.

(c) And in a Writ of Covenant brought by the Lessee against the Lessor, if L the Term be not expired, he shall recover the Term again, if he hath put him out. But if a Stranger put him out by eigne Title, then he shall recover all in Damages against the Lessor. And the second Lessee shall have a Writ of Covenant against the Lessor, if the Lease be made to him and his Assignees with Warranty.

And if a Man lease Lands for Life by Deed, and afterwards (d) putteth him out, the Lessee shall not have a Writ of Covenant against him, but an Assise. But if he grant by the Deed, that if a Stranger enter by eigne Title, that then

(a) *Perk. Covenant 29.* As to cutting Wood *contra.* See 5 Co. 21. a.

(b) 17 Ed. 3. *Covenant 2* accordant. But if he abate Trees, &c. *contra.* *Temp. Ed. 1. Covenant 29*

(c) See 20 Ed. 3. *Judgment 177.* accordant; for that the Demise is good from his Entry; but if Tenant in Tail makes a Lease for Years by Deed, and dies seised of Assets in Fee-simple; yet the Issue in Tail may enter; and therefore the Lessee shall have a Writ of Covenant against him to recover Damages, but not to recover the Term, for his Entry was lawful. 38 Ed. 3. 24. *Note;* The Writ of Covenant for the Lessee who is oulled by a Stranger, by Title is, *Quod teneat Convent', &c. De damnis & de perditis.* See there the Case of a Lessee for Life, the Remainder in Fee; the Feoffee for Life makes a Lease for Years (by *dedi & demisi*) rendering Rent by Indenture, and dies within the Term; he in Re-

mainder enters; the Lessee brings Covenant against the Executors, and held that it did not lie. 1. Because it is not shewn, that he was possessed at the Time of the Entry of him in Remainder. 2. For that without an expresse Covenant, the Executor shall not be charged in this Case, for the Covenant in Law expired with the Term. But if *d.* seised in Fee, makes a Lease for Years and dies, and the Heir oults the Lessee, he shall have Covenant against the Heir, for this Covenant in Law. See the Statute *de Bigamis*, and *Dyer 257.* 11 H. 6. 3. *Covenant 23, 27.* 6 Ed. 2. 17. 38 Ed. 3. 34. 16 H. 7. 10. *N. B. 102. Covenant 28, 30, &c.*

(d) 32 H. 6. 32. *contr.* if Lessee for Years; and *Note;* Action of Covenant lies against the Assignee of a Lessee for Years for Reparations, &c. for that it goes with the Land; also it lies against the first Lessee after Assignment. 25 H. 8. *Covenant 32.*

he shall have a Writ of Covenant thereupon: Now upon the special Matter he shall have a Writ of Covenant, otherwise not; *quod vide Trin.* 26 H. 6. Covenant, pl. 10.

- A And in *London* a Man shall have a Writ of Covenant without a Deed for the Covenant broken. 27 H. 6. 10. [146.] 27 H. 6.
- B And a Man shall have a Writ of Covenant against the Sureties who became Sureties, or gave Security that a Man should perform such Covenant, &c. 39 Ed. 3. 9. Covenant 11. 17 H. 6. 10. 40 Ed. 3. 5. 42 Ed. 3. 3.
- C (a) And the Assignee of the Lessee shall maintain a Writ of Covenant against the Lessor, although there be not any Assignee mentioned in the Deed of Covenant. Finchden. If the Covenant go with Land, the Assignee shall have Covenant without being named. As two Coparceners, one covenanteth to discharge the other Party, the Alienee shall have Covenant. the other Party.
- D Also Administrators shall have a Writ of Covenant as well as Executors.
- E And the Writ of Covenant ought to be brought where the Covenant was made. But if he bring it in another County, the Party shall not plead the same to abate the Writ, unless the Deed bear Date in another County, and so the Titles of Covenant in the Abridgments were at large for that Matter. 26 H. 6. Covenant 9, although it bear Date in other County, yet the Writ lieth where the Land is.

(b) Covenant to levy a Fine.

F THERE is another Manner of Covenant, which is more in the Realty. And that Writ properly lieth where a Man by Deed granteth to another to levy a Fine to him and his Heirs of certain Lands and Tenements, he to whom the Grant is made shall have a Writ of Covenant against him to levy a Fine of that Land; and the Form of the Writ is such:

The King to the Sheriff, &c. Command A. &c. that, &c. he keep with B. his Covenant made between them (c) of the Manor of N. with the Appurtenances; or thus, of one Messuage and one Acre of Land with the Appurtenances in N. &c. and unless, &c. F. Brief 867.

And the Form of the Particulars in that Writ shall be used as the Form is in a *Præcipe quod reddat* of Land, to put the Particulars in the said Writ. 46 Ed. 3. 4. 47 Ed. 3. 3.

(a) *Doctor and Student* 16, 17. *Bro. Covenant* 32. *F. Obligation* 16. *Perk.* 13. 40 Ed. 2. 5. *supra M.*

(b) And yet by *Paſon*, it is only a personal Action; and a Release of all Actions personal, is a good Plea therein; also the Sheriff may return *Nihil* on the Defendant in this Writ, and need not summon him in *Terra petita*; *ſed alii contr.* 10 H. 6. 12, 13.

Note the Difference between this and other Writs of Covenant; for this Writ is special, and the others general. 10 H. 6. 13.

(c) And Note; On such Fine levied of the Manor of *N* brought in the County of *L*. the Services of the Tenants in another County, held of the same Manor, shall pass; and a *Per quæ ſervitia* shall be brought in the County of *L*. Adjudged 21 Ed. 3. 18.

(a) And

35 H. 8. B. 20.
Fines 126.

(a) And if he who ought to levy the Fine, and make the Conufance, cannot come for Sicknefs or other reasonable Cause into Court, then he may fue a Writ of *Dedimus potestatem* directed unto fome Juftice, that he go to him to take the Conufance, and to certify the fame unto Juftices of the Common Pleas, and the Writ of Covenant ought to be sued before the *Dedimus potestatem* be returned in the Common Pleas; and the *Dedimus potestatem* ought to recite that the Writ of Covenant is depending in the Common Pleas before the Juftices; and the Writ fhall be fuch (b):

The King to his beloved and faithful W. Rickhill, greeting: Whereas our Writ of Covenant is depending before you and your Companions our Juftices of the Bench between A. and B. and C. his Wife, of one Plough-land with the Appurtenances in N. for a Fine to be levied thereof between them before you and your said Companions of the Bench aforefaid, according to the Law and Custom of our Realm; and the aforefaid A. B. and C. are themfelves fo impotent, that without the greateft Danger of their Bodies they are not able to travel to Weftminfter to make the Acknowledgments which are required in this Behalf, at the Day contained in the Writ aforefaid, as we have received Information: We having Compassion of the Estate of them the said A. B. & C. in this Behalf, have given to you Power of receiving the Acknowledgments which the aforefaid A. B. and C. will make before you in the Premiffes, and therefore we command you, that going personally to the aforefaid A. B. and C. you do receive their Acknowledgments aforefaid, and when you fhall have received them, that you do certify your Companions thereof diftinctly and openly, that then the Fine between the Parties aforefaid, of the Tenements aforefaid, before you and your said Companions in the fame Bench may be levied, according to the Law and Custom aforefaid; and have there then this Writ. Witnefs, &c.

And if the *Dedimus potestatem* be made unto any the Juftices of the King's Bench, then the Form of the Writ is fuch:

The King to his beloved, &c. W. his Chief Juftice, &c. Or thus: To our Juftice, &c. Whereas the Warden of the Houfe of the Vicarage of the Church of the blessed Peter of York, hath brought our Writ of Covenant againft H. Knight, of the Advowfon of the Church of F. for a Fine to be levied thereof between them, before our Juftices of the Bench, according to the Law and Custom of our Realm, and the said Warden and H. are fo impotent (as above, until) and when you fhall have received them, that you do certify our aforefaid Juftices thereof under your Seal diftinctly and openly, that then the Fine, (&c. as above, until) according to the Law and Custom abovesaid, fending to the fame Juftices this Writ. Witnefs, &c.

And if a Man have divers Writs of Covenant depending againft feveral Perfons in feveral Counties, &c. he may have one Writ of *Dedimus potestatem* directed to one Juftice to take their Conufance feverally, and to certify them, &c. and the Form of the Writ is fuch:

(a) See the Statute of *Carlise*, 15 Ed. 2. for, before that Statute, one might have levied a Fine by Attorney. *Libr. Parl.* 18 Ed. 1. 11. See *Stat. Mag. Chart. fol.* 93.

(b) See a good Difinction between antient

Fines and thofe levied at this Day. A Fine levied without an Original, or of Things not comprifed in the Original, or after a Nonfuit recorded, good in antient Fines. 16 Ed. 3. *Abbe* 13.

The King, &c. Whereas our Writ of Covenant is depending before you and your Companions our Justices of the Bench between E. and I. of the Moiety of the Manor of N. with the Appurtenances, and another our Writ of Covenant is depending before you and your Companions aforesaid between him the said E. and the aforesaid I. of one Messuage, &c. (and so of others, &c.) for Fines to be levied between them, &c. (as above).

And if a Man ought for to levy a Fine, and he is going in the King's Service, then he shall have a *Dedimus potestatem* directed unto the Justices to take his Conufance. And so of a Woman who is with Child; and the Writ shall mention the same, thus:

The King, &c. Whereas our Writ, &c. (as above, until) for a Fine to be levied, &c. and the aforesaid W. by our Command is going elsewhere in our Service, and the aforesaid I. is pregnant and great with Child, and the aforesaid B. is weak and impotent, by which the aforesaid W. cannot come, and the aforesaid I. and B. are not able to travel to Westminster to make the Acknowledgments, &c. at the Day contained in the said Writ; We being willing to do a special Favour to him the said W. in this Behalf, and having Compassion of the Estate of them the said I. and B. in this Behalf, &c.

[1+7.]

A And if he in the Reversion will levy a Fine of his Reversion unto another, upon a Writ of Covenant sued forth against him, the Conufance shall be taken in the Common Pleas, but the Fine shall not be ingrossed until the Tenant for Life have attorned; and the Fine is said to be ingrossed, when the Chirographer maketh Indentures of the Fine, and delivereth them to the Party to whom the Conufance is made, and then it is said, that the Fine is ingrossed, and after that the Conufee shall not have a *Quid juris clamat* against the Tenant for Life. But the Course is, when he in the Reversion upon the Writ of Covenant sued against him, maketh the Conufance of the Reversion by Fine, &c. then upon that the Conufee shall have a *Quid juris clamat* against the Tenant for Life; and if the Tenant for Life be so weak that he cannot travel, then he may sue a *Dedimus potestatem* directed to the Justices to take his Conufance, &c. and to certify the same into the Common Pleas, &c.

22 H. 6. 13.
1 Ed. 3.
No *Quid juris clamat* lies after Judgment. Plow. 431.

And the like Writ of *Dedimus potestatem* shall be granted, where the Lord by Fine granteth the Services of his Tenant unto another upon a Writ of Covenant sued against him. If the Conufee sue a *Per quæ servitia* against the Tenant, then if he be weak or sick, he may sue a *Dedimus potestatem* to take his Conufance, &c. and to certify the same, &c. But now the Course is for to admit the Defendant in a *Quid juris clamat*, or *Per quæ servitia*, to make Attorney after a Plea pleaded; and that especially where he pleadeth such Plea, that he shall forfeit his Estate, if it be found against him, &c. then it is clear, that he shall make Attorney after the Plea pleaded; and the Course is now to make Attorney after Pleading; and if he be adjudged to attorn, to award a *Disstringas ad attornandum* against him, &c.

2 H. 5. 1.
4 Mar. Dyer 166.

B And if a Man have a Writ of Covenant against one to levy a Fine, and thereupon a *Dedimus potestatem* directed to a Judge to take the Conufance of the Party, and the Judge doth take the Conufance by Force of the Writ, and will not certify the same in the Common Pleas, then the Party may sue a *Certiorari* directed to the same Judge, reciting all the Matter how he hath taken the Conufance, commanding him by the Writ to certify the same into the

Writ of Dower unde Nihil habet.

Common Pleas: And upon that an *Alias* and *Pluries*, and Attachment to the Judge, if he will not certify it, or return it, or shew Cause why he do not certify it. And if the Judge be dead who took the Conufance, he may have a *Certiorari* to his Executors, and an *Alias* and *Pluries*, and Attachment, *vel causam nobis significes*; and in the End of the Writ shall be this Clause; *And have there the Writ by which you received the Acknowledgments aforesaid, and this Writ, for we have given in Charge to our Justices of the Bench aforesaid, that you have sent to them the Acknowledgments and Writs aforesaid under our Seal, that they may receive them from you. Witness, &c.* And by that it appeareth, that although the *Certiorari* be sent to the Judge to return the Conufance taken before the Justices of the Common Pleas, that yet he ought to sue forth another Writ to be sent and directed to two Justices of the Common Pleas, to receive such Conufance taken: And the Writ of *Certiorari*, which shall be directed unto the Justices of the Common Pleas to receive the Conufance, is in the Register amongst the Writs of Covenants.

And if a Man will levy a Fine of Lands holden of the King in Chief, then C he ought to have a special Writ unto the Justices of the Common Pleas, thus:

The King to his Justices of the Bench, greeting: Whereas by our Letters Patent of our special Favour we have granted to I. that he may infeoff W. of his Manors of N. and I. with the Appurtenances, which he holds of us in Chief, &c. (reciting the whole Charter) as in our Letters aforesaid is more fully contained, and our Writ of Covenant is depending before you in our Bench aforesaid between the aforesaid I. and W. of the Manors aforesaid, for a Fine to be levied thereof between them, according to the Law and Custom of our Realm, as we have received Information; We command you, that you permit that Fine between the Parties aforesaid to be levied before you in the Bench aforesaid, according to the Tenor of our Letters Patent aforesaid, &c.

And if it do appear unto the Court, that the Lands are holden of the King D *in Capite*, the Court *ex Officio* ought not to suffer such Fine to be levied without such a Writ directed unto them, declaring the King's Pleasure.

And there is another Writ of *Certiorari* directed unto the Treasurer and Chamberlains of the Exchequer, to certify the Transcript of a Fine in the Chancery; and a Writ of *Mittimus* out of the Chancery directed to the Justices of the Common Pleas, to transcribe the said Fine, &c.

And another Form of Writ of *Certiorari* directed unto the Chirographer, to certify into the Chancery *Tenorem cujusdam notæ in Cur' Domini E. nuper Regis Angliæ, &c.* as appeareth in the Register.

Writ of Dower unde Nihil habet.

29 Aff 68.
Br. Dower 63.
Dower lieth
not against
Guardian in
Socage, and
therefore it is

A Writ of Dower *unde Nihil habet* lieth, in Case, where a Woman taketh E
her Husband, who is sole seised of Lands or Tenements to him and
his Heirs in Fee-simple, or unto him and the Heirs of his Body, &c. Or if
the Husband during the Marriage betwixt him and his Wife, be solely seised

therefore it is doubted if such a Guardian shall assign Dower, if there be a Disseisin.

in Fee-simple or in Fee-tail of such Estate, that the Issue begotten betwixt him and his Wife may inherit the same, then if the Husband doth alien the same, or dieth seised thereof, or be thereof disseised, and dieth, his Wife shall have a Writ of Dower *unde Nihil habet* against him who is Tenant of the Freehold of the Land, or against him who is Guardian in Knight's Service of the Land; and the Form of the Writ is,

[148.]

A *The King to the Sheriff, &c. Command A. that justly, &c. he render to B. who was the Wife of C. her reasonable Dower which falls to her Share, of the Tenement which was the aforesaid C.'s, some time her Husband in N. whereof she nothing hath, as she saith, and whereof she complains that the aforesaid A. unjustly deforceth her, and unless, &c. (a).*

And against the Guardian the Writ is such: *Command A. Guardian of the Land and Heir of J. that he render &c. to B. who was the Wife of C. &c. (b).*

Otherwise where the Wife is endowed *ad ostium Ecclesiæ*, thus: *Command A. that, &c. he render to B. who was the Wife of C. one hundred Acres of Land with the Appurtenances in N. of which the aforesaid C. some time the Husband of her the said B. endowed her at the Door of the Church when he espoused her, whereof she nothing hath, &c.*

And if she be endowed *de assensu Patris*, then thus: *Command A. that, &c. he render to B. who was the Wife of C. one hundred Acres of Land, &c. of which the aforesaid C. (Son and Heir of the aforesaid A.) some time the Husband of her the said B. with the Assent and Will of him the said A. his Father, endowed her at the Door of the Church, &c. whereof, &c.*

B And the Writ of Dower *unde Nihil habet* may be sued in the County before the Sheriff by a *Justicies*.

C (c) And a Wife shall be endowed of Advowsons, Villains, Commons of Pasture, and of other Profits or Liberties of which her Husband had any Estate of Inheritance; which Estate the Issue betwixt them by Possibility may inherit, &c.

Perkins 67,
68. Common
fans numbr. &
Estovers.
Old N. B. 5.
2 Ed. 3.
Dower 23.

D And the Wife may sue a Writ of Dower of Lands or Tenements in London, and the Writ shall be directed unto the Mayor and Sheriffs of London; and the Writ shall be such:

The King to the Mayor and Sheriffs of London, greeting: We command you, that you justice A. that justly and without Delay, and according to the Custom of our City of London, he render to B. who was the Wife of C. her reasonable Dower which falls to her Share, &c. in London, and justice D. that justly, &c. and according to the Custom, &c. he render to the said B. her reasonable Dower, &c. in the same City, whereof she nothing hath, &c. as she saith, and whereof she complains that the aforesaid A. and D. do deforce her, as she can reasonably shew, that they ought to render to her, that we may hear no more Clamour, &c. Witness, &c.

(a) Note; Although the Writ is conditional, *Nisi, &c.* yet the Demandant is not bound to accept Tender *in pais*, for then he would lose his Damages, &c. nor is the Tenant bound to render himself there, and yet he may plead *semper paratus*. 11 H. 4. 62.

(b) 9 H. 5. 4. Note 13 Ed. 3. Brief 242.

and if he be Guardian both of the Land and Body, he ought to be so named in the Writ, or else it shall abate. 18 Ed. 2. Brief 822. Also he ought to make him Heir by the Writ, to him that was last seised. 11 Brief 473.

(c) N. B. 5. Perk. 68. Post. 149. K. 12 Ed. 3. Dower 90.

Writ of Admeasurement of Dower.

And by that it appeareth, that a Woman shall have a Writ of Dower in *London* against several Tenants, by a several *Justices*, in one Writ, as well as she shall have a Writ of Dower against several Tenants by several (a) *Preci- pes*, and all in one Writ. And the Proceſs is Summons, Grand Cape and Petit Cape in the Common Pleas.

(b) Writ of Admeasurement of Dower.

Post. 149. B. **T**HE Writ of *Admeasurement of Dower* lieth, where the Heir, when he is within Age, endoweth the Wife of more than she ought to have Dower of: Or if the Guardian endow the Wife of more than of the third Part of the Land of which she ought to have Dower: Then the (c) Heir at his full Age may sue this Writ against the Wife, and thereby she shall be admeasured; and the Surpluſage which she had in Dower shall be restored to the Heir; but in such Caſe there shall not be assigned anew any Land to hold in Dower, but to take from her ſo much of the Land which amounteth to above the third Part of all the Land of which she ought to be endowed.

And if the Heir within Age, before the Guardian enter into the Land, do assign to the Wife more Land in Dower than she ought to have, then the Guardian shall have the Writ of *Admeasurement* against the Wife, by the Statute of *West. 2. cap. 7.* And if the Guardian bring the Writ, and do pursue it against the Wife; yet the Heir at his full Age, by the same Statute, shall have the Writ of *Admeasurement of Dower* against the Wife.

And the Writ is *Vicontiel*, and shall be sued in the County before the Sheriff; and the Writ is such:

(d) *The King to the Sheriff, &c. A. the Son and Heir of B. hath complained G unto us, that C. who was the Wife of the aforesaid B. hath for Dower more of*

(a) *A. brings Dower against B. de Libero Tenemento in C. and afterwards before Plaint made, brings another Writ in the same Vill, against the same Tenant, this Writ shall abate, although that no Plaint was made before; for by Sbará, one shall not have two Writs of Dower unde nihil habet, at the same Time, in the same Vill, except it be on some special Matter, as if the Tenant purchase other Tenements after the former Writ, whereof she is dowable. 11 Ed. 3. Brief 476. contra 39 H. 6. 12.*

(b) *Note; View is not grantable in this Writ; adjudged 17 Ed. 3. 67. contra. Adjudged 18 Ed. 3. 20.*

(c) And it seems, that the Heir within Age shall not have *Admeasurement of Dower.* (See 149. B. *contr.*) of his own Assignment. 7 Ed. 2. *Admeasurement* 13. And *Note; If the Heir of Age assign, he shall not have this Writ against his own Assignment. 6 H. 3. Admeasurement 18.*

And *Note; It need not be acknowledged of whom the Assignment is held. 17 Ed. 3. 66.*

(d) See 13 Ed. 3. *Admeasurement* 17. and yet by *Brañ. Li. 4. c. 17.* If she has Lands in Dower, in divers Counties, there it ought to be *coram Justiciar*. And *Note; there the Tenant shall have several Writs, viz. 1. In every Writ of Admeasurement, all the Lands which she has in the same County shall be named, and admeasured. 2. If she has Lands in several Counties, there shall be several Writs, and several Extents of all the Lands of which the Party died seized, as it seems; yet he shall have one Count, and one Admeasurement; sed Quære, how it shall be made. 13 Ed. 4. Admeasurement 17. Yet Note 7 R. 2. ibid. 4. the Defendant was to answer, notwithstanding the Exception. 7 R. 2. Admeasurement 4.*

the Freehold which was the aforesaid B.'s some time her Husband, in N. than she ought to have, and than belongs to her to have; And therefore we command you, that justly and without Delay you cause that Dower to be admeasured, so that the aforesaid C. may not have more for Dower of the Inheritance of aforesaid A. than she ought to have, and than belongs to her to have, according to her reasonable Dower, and let the aforesaid A. have of that Dower that which he ought to have and belongs to him to have, that we may hear no more Clamour, &c. Witnesses, &c.

And for the Guardian the Writ is such: A. the Guardian of the Land and Heir of E. hath complained unto us, that C. who was the Wife of the aforesaid E. hath more for her Dower, &c. (as above, until) so that the aforesaid C. may not have more in Dower of the Inheritance of the aforesaid Heir, than she ought to have, &c. and that the aforesaid Guardian may have of that Dower, &c. that we may hear no more Clamour, &c.

H And when the Plea is in the County, the Plaintiff may remove it without Cause, and the Defendant may remove it with Cause in the Writ, as in a Replevin. And if the Writ be removed in the Common Pleas by a *Pone*, and Process be awarded against the Defendant according to the Statute, which is Summons, Attachment and Distress, &c. Then the Sheriff cannot make the Admeasurement, but to extend all the Land particularly; and to return the same into the Common Pleas, and thereupon the Admeasurement shall be made by the Justices.

I (a) And if the Guardian assign for Dower, &c. more than she ought to have, and afterwards grant over his Estate, his Assignee shall not have a Writ of Admeasurement (b).

And so if the Heir within Age assign unto the Wife more in Dower than she ought to have, &c. The Guardian in Right may have a Writ of Admeasurement; but if he grant over his Estate, his Assignee who is Guardian in Fact shall not have the Writ, because it was a Thing in Action given to his Lessor, &c. and the Heir shall have a Writ of Admeasurement of Dower, for Dower assigned in the Time of his Ancestor. [149.]
14 Aff. pl. 4.
Perk. 19. d.
7 H. 2.
Admeasure-
ment 4.

A And if a Woman be endowed in Chancery by the King, &c. the Heir shall have a Writ of Admeasurement against her if she have more assigned to her for her Dower than she ought for to have. 12 H. 6.
Admeasure-
ment 9.

(a) Note; These Points are well resolved.
1. If the Guardian assigns Dower, and grants over the Ward, the Grantee shall not have Admeasurement. 2. If the Ancestor assigns Dower and dies, the Guardian of his Heir shall not have Admeasurement, but his Heir shall have it, and so it seems, though the Ancestor was within Age at the Time. (Vide Post. 149.) 3. Where the King seizes a Ward, where he has no Right, the Ward sued an *Ouster le Main*, and had it, *Salva dote*; it seems in such Case, the Ward shall have Admeasurement; *contra* if he had been Assignee, or Grantee of the King. 7 R. 2. Admeasurement

4. Note there, where a Disseisor endows the Feme of more than a third Part, the Heir shall have an Assise.

(b) If on a Recovery of the third Part in Dower, the Sheriff assigns a Moiety, &c. the Tenant has Remedy against the Sheriff by Assise, or he may have a *Sive facias* against the Sheriff to assign *de novo*. 22 R. 2. Execution 165. See 21 H. 7. 29. If an Infant assigns for Dower more than he needs, he shall not avoid it by Entry. See 10 Ed. 3. 31. Dower shall not be admeasured by a Writ of Dower. 19 Ed. 3. *Quare impedit* 154.

7 R. 2. And if the Guardian do assign Dower more than she ought to have, the B
 17 Ed. 3. 67. Heir during his Nonage shall not have a Writ of *Admeasurement*, but if he
 7 Ed. 2. himself assign more for Dower than she ought to have, &c. then it seems rea-
 Admeasure- sonable, that he himself during his Nonage have the Writ of *Admeasurement of*
 ment 13. *Dower*.

(a) But if the Wife after the Assignment of Dower do improve the Land, C
 5 Co. 12. a. and make it better than it was at the Time of the Assignment; an Admea-
 surement doth not lie of that Improvement. But if the Improvement be by
 Casualty of a Mine of Coals or of Lead, which are in the Land, &c. which
 have been occupied in the Husband's Time, the Doubt is the more; but she
 cannot dig new Mines; for that shall be Waste if she so do.

Dr. and Stud. And if the Ancestor dieth seised, and the Husband die before he entred D
 84. into the Land, yet the Wife shall be endowed, although her Husband had
 but a Possession in Law. 7 Ed. 3. 66. 21 Ed. 3. 31. 3 H. 7. 103.

Perk. 89, 91. But a Man shall not be Tenant by the Courtesy of the Wife's Land, if his
 3 H. 7. 5. Wife had not a Possession in Deed, if it be not in special Cases; as of Ad-
 21 Ed. 3. 21. vowson or Rent, where she dieth before the Day of Payment of the Rent.

N. Br. 8. And in that Case, if the King's Tenant die seised, and the Heir die before
 he enter; then the Wife shall be endowed.

1 H. 7. 17. But if the Heir enter and intrude upon the King's Possession, and afterwards
 4 H. 7. 1. die before he sueth his Livery; the Wife shall not be endowed by the Statute
 of *Prærogativa Regis*, cap. 12. which is, that if the Heir intrude upon the
 King's Possession, that *Nullum accrescit ei liberum tenementum*, &c.

(b) Where a Woman taketh a Lease for Years of Land, she shall not be E
 2 H. 4. 7. endowed of the same Land during the Term.
 Perkins 96. d.

And where the Estate which the Husband hath during the Marriage is F
 41 Ed. 3. 30. ended, there the Wife shall lose her Dower. As if Tenant in Tail do discon-
 tinue in Fee, and afterwards taketh a Wife and disseiseth the Discontinuee, or
 the Discontinuee doth enfeoff him, and afterwards the Tenant in Tail dieth
 seised, his Heir is remitted, and the Wife shall lose her Dower, because the
 Heir is in of another Estate of Inheritance, than the Husband had during the
 Coverture.

And so if a Man have Title of Action to recover any Land, and after-
 wards he entred and disseiseth the Tenant of the Land, and dieth seised, and
 his Heir entred, the Heir is remitted unto the Title which his Ancestor had,

(a) 14 H. 3. *Admeasurement* 10. 13 Ed. 1.
Ibid. 17.

(b) See accordant, where a Feme took the
 Commitment of the Guardianship by the King's
 Grant, without any Exception of Dower, and
 she was barred of her Dower during the Heir's
 Nonage, 2 H. 4. 7. but if the Husband be at-
 tainted, and dies, and the Feme takes a Lease
 for Years of the King's Grant of his Lands, and
 afterwards by Act of Parliament, or by Reversal

of the Judgment, (the Heir of the Husband be-
 ing in the King's Ward, for that the Tenements
 were intailed,) now she shall have her Dower,
 because it was before, (after) her Title of Dow-
 er commenced; and so if *A.* makes a Lease to
B. for Years, and they intermarry, and *A.* dies
 within the Term, the Feme shall be endowed.
 6 H. 4. 7, 8. Sir *John Cornwall's* Case. See
Dyer 76. a Feme Tenant at Will brings Dower
 of the same Lands.

and the Husband's Wife shall lose her Dower; for that Estate which the Husband had is determined, for that was an Estate in Fee by Wrong, and the Heir hath the Estate in Fee which his Ancestor had by Right. 16 Ed. 3. 21.

- G (a) If a Man make a Gift in Tail, reserving Rent to him and his Heirs, and afterwards the Donor hath a Wife, and the Tenant in Tail dieth without Issue, the Wife of the Donor shall not be endowed of the Rent, because the Rent is extinct, for it was reserved upon the State-tail which is ended: But although that the Tenant in Tail dieth without Issue, yet his Wife shall be endowed, because the Land continueth and is not determined as the Rent is. 10 Ed. 3. Avowry 159. Perk. 63. d. 46 Ed. 3. 24. Finchden.
- H If the Grandfather dieth seised, and after the Father dieth seised, and the Son hath the Land, and then the Wife of the Grandfather, is endowed of the third Part of the Land and dieth, yet the Wife of the Father shall not have Dower of that third Part, because *dos ex dote peti non debet*. Perkins 62. 45 Ed. 3. 13. Ant. 148. C. 45 E. Dower 5. 8 Ed. 2. Entry 75.
- I And if the Husband be Tenant in Common with two others in Fee of certain Lands, and dieth, his Wife shall be endowed of the third Part of that Land, only with Metes and Bounds to hold in Common, &c.
- K And if a Wife be endowed of a Mill, or of an Office, she shall have the third Part of the Profits thereof assigned unto her, and she shall have a Freehold in the third Part of the Mill, &c. *M.* 45 Ed. 3. 45 Ed. 3. Dower 50. 1 H. 5. 1. Perkins 67 g. Litt. 8.
- L (b) A Woman at the Age of nine Years or more at the Death of her Husband, shall have Dower of his Land. And if she be of less Age at the Death of her Husband, then she shall not have Dower. 12 H. 4. 1. Dr. and Stud. 13.
- M (c) If a Woman be endowed, and afterwards loseth by Action tried, if she pray in Aid of him in the Reversion, she shall be new endowed of that which remaineth (d).
- N If the Husband exchange Land, &c. and afterwards dieth, if the Wife have Dower of the third Part of the Land taken in Exchange, she shall not have Dower of the other Land, &c. which was given in Exchange. 1 Inst. 31. b. Perk. 63.
- O If a Woman be Guardian in Socage, and she bring a Writ of Dower against a Stranger, he may plead, that she holdeth other Land in Socage of which she may endow herself, *de le plus beale*, and then the Wife upon that may endow herself of those Lands unto the Value of the third Part, which she ought to have of the other Lands which the Guardian holdeth, &c. And whether she may endow herself of the *plus beale* unto the Value of the third Part which she ought to have of her Husband's Land or no, *Quere*; for some Litt. 10 d. That he hath a Freehold. 45 Ed. 3. 6. Candish. ecc. to this here.

(a) Note; If Rent be granted to *I. S.* and his Heirs on Condition, that if the Grantee or his Heirs die, his Heir within Age, the Rent shall cease during the Nonage, &c. the Feme shall recover Dower of the Rent against the Tertenant, but *cessat Executio* during the Nonage. 12 Ed. 3. Dower 11. 22 Ed. 3. 19. 10 H. 7. 13. 5 Ed. 2. Dower 153. 10 Ed. 3. 21. Perk. 62, 63. 46 Ed. 3. 24. 12 Ed. 3. Cond. 11.

(b) *Co. Lit.* 33. a. 7 H. 6. 11. 12 R. 2. Dower 54. of whatsoever Age the Husband be. See 1 Inst. 384.

(c) See 4 Ed. 3. 25, 36. 50 Ed. 3. 7. Yet there seems to be this Diversity, if a Feme be endowed by a Disseisor, she shall have the Warranty, &c. but if she recovers the Lands only, which are granted over by the Heir, she has lost her Warranty against the Grantee. 7 Ed. 3. 7. 21 Ed. 3. 48. 10 Ed. 3. *Quid Juris* 41.

(d) And she shall have Election to be endowed of what Part thereof she will. See *Co. Lit.* 31. b. Perk. 63.

hold,

hold, that Dower *de plus beale* shall endure but during the Minority of the Heir who is in Ward.

[150.] The Son would have endowed his Wife of a Reversion of Land which one A held for Life *ex assensu Patris*; and it was holden, that it was not good, *M. 4 Ed. 3.* because it was not in Possession; whereof a Right of Dower may be claimed. *4 Ed. 3. Dower 117. 6 Ed. 3. 34. Perk. 86.*

22 Ed. 3. Dower 131. Perk. 64. 2. And the Writ of Dower *ex assensu Patris* lieth as well against the Guardian B as against the Tenant of the Freehold.

If the Tenant fore-judge the *Mesne*, yet the Wife of the *Mesne* shall be endowed. *Perk. 84.*

5 Ed. 3. Dower 149. If a Man recover in Value against the Husband by a Warranty *Auncestrel*; D yet the Wife shall be endowed, because the same is by Force of the Warranty made, and not by reason of eigne Title to the Land. *5 Ed. 3. Dower, 139.*

The younger Son shall not assign Dower to his Wife *ex assensu Patris* of E the Father's Land, because he is not Heir Apparent. *Litt. 9. a.*

Perk. 68. 2. 13 Ed. 19. Dower 161. If the Husband enter into Religion, the Wife shall not have Dower during F his Life. *Perk. 61, 32.*

The Wife shall have the third Part of the Advowson for her Dower. *G 1 Ed. 1. Dower 176.*

43 Ed. 2. 19. Perk. 70. b. If the Wife do elope from her Husband, and remain with the Adulterer, H she shall lose her Dower; but if she remain in Adultery upon the Husband's Lands or Tenements, she shall have Dower, because the same is not an Elopement. *1 Inst. 32. b. Perk. 170. D.*

If the Husband be attainted of Felony by Outlawry or otherwise, she shall I lose her Dower.

If one Joint-tenant make a Feoffment of his Part, his Wife shall not be K endowed because her Husband was never sole seised. *34 Ed. 1. Dower 179.*

Endowment *ex assensu Matris* is good, but *ex assensu Fratris* it is holden it L is not good. *9 H. 3. Dower 19. 8 Ed. 2. Dower 167. contr.*

3 H. 6. 4. And Dower *ex assensu Patris* after the Marriage is good.

If a Man marry a Woman in a Chamber, Dowment *ad ostium Camere* is M not good. *2 H. 3. Dower 198. 1 Inst. 34. a.*

Dowment *ad ostium Ecclesie* of the Moiety of the Land is good.

And a Woman married in a Chamber shall not have Dower by the Com- N mon Law, *H. 16 H. 3. Quere* of Marriages made in Chapels not consecrated, &c. for many are by Licence of the Bishop married in Chapels, &c. And it seemeth reasonable, that in such Cases she shall have Dower. *1 Inst. 34. b. 10 H. 3. Dower 200, 201. Perk. 61.*

And in some Places the Wife shall have the Moiety in Dower, as in Gavel- O kind. *1 Inst. 33. b. Litt. 8.*

And in some Cities she shall have all by the Custom which is called Free P Bench, &c. And *Glawvil* saith, that *ad ostium Ecclesie* a Man cannot assign more than the third Part in Dower, and if he do, the Wife shall be admeasured, &c. but less may be assigned by Law; yet at this Day it seemeth, that the Assignment *ad ostium Ecclesie* of more than the third Part is good, and she shall not be admeasured for it. *Ibid. contr. 1 Inst. 36. a.*

And

Q And the Wife shall not be distrained in the Lands which she holdeth in Dowry, for the Debts of the Husband in his Life due to the King, nor in the Lands of Inheritance of the Wife, nor in the Lands which she hath by Purchase made by the Husband to him and his Wife, and unto their Heirs; and if she be distrained by the Sheriff, she may sue forth such Writ. 50 *Aff.* 5. It is otherwise of a Lease for Years. See 8 Co. 171. *Fleetwood's Case*.

The King to the Sheriff, &c. Whereas according to the Law and Custom of our Realm of England Women ought not to be distrained to pay the Debts of their Husbands in the Lands and Tenements which they hold in Dowry of the Gift of their Husbands, or which are of their own Inheritance, or which they purchased to themselves, and you distrain B. who was the Wife of A. in her Lands and Tenements which are holden in Dowry of the Gift of the aforesaid A. and which were also of the Inheritance of her the said B. as we have received Information from her Complaint: We command you, that you do not cause her the said B. to be distrained in her Lands and Tenements which are holden in Dowry, or which are of her own proper Inheritance, or of the Purchase of her the said B. to pay the Debt of the said A. some time her Husband, against the Law and Custom aforesaid; and the Distress which, &c. cause to be delivered to her, &c. Witness, &c.

There is another Form of Writ in the Register for Tenant in Dowry, which is directed unto the Sheriff, commanding him that he do not distrain the Wife in those Lands which she holdeth in Dowry, or of her own Inheritance, for the Husband's Debt; but that Writ hath these Words in the End of the Writ, *Yet, so long as the Heirs and Executors of the Testament of him the said A. have not sufficient Distress to render to us those Debts, &c.* And by these Words in the Writ it seemeth, that if the Heir of the Executors have not sufficient of Lands or Goods to pay the Debt, that the Wife shall be charged and distrained for the Debt of the Husband in those Lands. But it seemeth reasonable, that the Wife shall not be charged or distrained for the joint Purchase made to her Husband and her, nor for her Lands of Inheritance, nor in the Lands wherein she hath Title of Dowry before the Husband become (a) indebted unto the King. And that the first Writ is according to Law for those Cases. But if the Husband be indebted unto the King before she have Title of Dowry, it seemeth to be otherwise.

And there is another Writ in the Register for the Wife directed to the Sheriff, that he do not distrain her in Lands or Tenements which her Husband and she purchased jointly before the Husband was indebted to the King; if they purchase the Land jointly to them in Fee, the Lands after the Death of her Husband in the Hands of the Wife and her Heirs shall be discharged of the Debt; and if he be distrained, that he deliver them again to the Wife.

And by the same Reason, although the Husband be before indebted to the King; that if he and she purchase the Land jointly in Fee to them, after the Death of the Husband, the Wife and her Heirs be discharged of that Debt. And there is another Writ in the Register for the Tenant in Dowry, directed to the Sheriff, that he do not distrain the Wife for the Husband's Debt, be

(a) See 40 *Aff.* 36. 50 *Aff.* 5. *Dyer* 224. *Sir William St. Loë's Case*, acc.

cause that the Heir, who ought to pay the same out of the Lands, is within Age, and in Ward to the King. Or because that other Tenants who should be charged with the Payment thereof, are omitted (a).

And so it seemeth, the Lands of the Tenant in Dower shall be discharged, if there were other Lands of the Husband to pay the Debt. And those Writs appear in the Register, fol. 142, 143.

[151.] * And another Writ directed to the Sheriff, that he do not distrain the Wife A
 * V. 50 Aff. 5. who holdeth Lands in Dower for the Debts of the Husband which he owed
 Br. Charge 34. to the King before the Contract of Marriage between him and his Wife, nor
 The Husband and Wife be- the Lands which the Husband and Wife purchased jointly in Fee, for the Hus-
 fore Marriage purchase a band's Debts, which he became Debtor for before the Purchase. And the
 purchase a may have such Writ out of the Chancery directed unto the Treasurer and
 Lease for Barons of the Exchequer, commanding them that they inquire thereof, and if
 Years, the they find the same, that they surcease and discharge the Wife with this Pro-
 Husband di- viso in the Writ; *Provided that these Debts be levied upon the Executors and*
 eth, the Lease Heir of the aforesaid A. and upon the Tenants of the Lands which were his, and
 extended for which of Right ought to be charged therewith, as is just. *Witness, &c. Contra*
 the King's of a Lease for Years. 50 Aff. 4.
 Debt.

Writ de Consuetudinibus & Servitiis.

a Ed. 3.
Droit 28.

THE Writ of Customs and Services is in its Nature a Writ of Right, and B
 lieth sometimes for the Lord who hath a Fee in the Seignory, and some-
 times for the Tenant in Tail of the Seignory, or for Tenant in Dower, or
 Tenant for Life, or for him that hath a less Estate than a Fee, and the Writ
 is Close, and not Patent, and shall be directed unto the Sheriff, and shall be
 returnable sometimes into the Common Pleas, at the Pleasure of him who
 sueth the Writ. And that Writ may be sued in the County before the Sheriff
 by a *Justicies*.

And the Writ lieth where the Tenant doth deforce the (b) Lord of the C
 Service which he ought to do, or of the Rent which he ought to have, as
 well as of Service. And the Form of the Writ which is returnable in the
 Common Pleas is,

The King to the Sheriff, &c. Command A. that, &c. he do to B. the Customs D
and Services which he ought to do to him (c) for his Freehold, which he holds of
him in G. as in Rents, Arrearages, and other Things; or thus, in Homage, Re-
liefs, and other Things; or thus, in Suits of Court, and other Things, and un-
less, &c.

And if the Party were not seised of the Services and Tenements which he
 claimeth, but his Ancestor, then he shall not say in the Writ, *ut in arre-*
rariis, &c. But Omission shall be made in the Writ of the Services.

(a) See *Rot. Parl.* 18 Ed. 1. fol. 14. acc.

(b) *Viz.* Against the Mesne, but not against the Tertenant. 31 Aff. 31.

(c) Note; If the Writ be *Debet & Solet*, no View lies *per Shard.* 11 Ed. 3. See 18 Ed. 3. View 161.

- E** And if the Writ be sued in the County before the Sheriff, then the Writ is such :
The King to the Sheriff, &c. Justice A. that, &c. he do to B. the Customs and right Services, &c. (as above) as he can reasonably shew that, &c. that we may bear no more, &c.
- F** And a Man may sue several Tenants by one Writ of Customs and Services by several *Præcipes* in the Common Pleas, or by one Writ and diverse *Justic*' in the Writ, which shall be directed unto the Sheriff to hold Plea upon them. But if the Writ of Customs and Services be sued against several Tenants by several *Præcipes* in the Writ, and returned into the Common Pleas, then all the *Præcipes* shall be put together, thus: *Command A. that, &c. he do to B. &c. and command C. that, &c. he do to D. &c. and command F. that &c. he do to G. &c.* And in the last *Præcipe* shall put this Clause, *In Rents and other Things*, and this Word *Arrears* shall be left out.
- G** And when the Writ is in the Right only, then he shall count of the Seisin ^{2 Ed. 2. Fite.} of his Ancestor, and the Writ only in the *Debet*; but when he counts of his ^{Droit 28.} own Seisin, then the Writ is in the *Debet & solet, &c.*
- H** And Disclaimer lieth for the Tenant in this Writ against the Demandant (a).
- I** And note, that if he say in the Writ, *As in Rents and Arrears, &c.* that ^{N. B. 38.} these Words prove that the Demandant himself was seised of the Services, and ^{the Disclaimer} then if he count in such Writ of Seisin of his Ancestors, and not of his own ^{er ought to be} Seisin, the Writ shall abate; ^{in a Court of} *quod vide 30 Ed. 1. Title Droit.* ^{Record and} ^{not in the} ^{County.}
- K** (b) But if he will bring a Writ of Customs and Services of the Seisin of Ancestors, he ought to leave these Words out of the Writ, *As in Rents and Arrears, &c.*
- And a Writ of Customs and Services doth not lie against Tenant in Frank-marriage, until the fourth Degree be past, *&c.* if not, that he hath done Homage to the Lord, *&c.* for by so doing he is concluded, *&c.*
- L** And if a Man will bring a Writ of Customs and Services against any Tenant, and by his Count demand Homage, then the Writ ought to make special Mention thereof, as to say, *As in Homage, &c.* otherwise the Writ shall abate.
- M** And if a Man holdeth divers Manors in several Counties by one Service, *&c.* if the Lord be deforced or kept from his Services, he shall have several Writs of Customs and Services, for each County one Writ, and shall have them returned at one Day, in the Common Pleas, and then he shall count upon them, as his Case is, which see in the Title of *Droit*, 30 Ed. 1. ^{Droit 75.}
- N** And note, that this Writ is a *Præcipe quod faciat, &c.* and where he demandeth Land, then the Writ is *Præcipe quod reddat, &c.* and in this Writ the Mife shall be joined, if the Writ be brought by Tenant in Fee of the Tenancy, by him who hath a Fee in the Seigniori. But if the Writ be brought by Tenant in Dower, or Tenant in Tail, against the Tenant in Fee-simple, it is a Question how the Mife shall be joined. But, I think, the Mife shall be joined in that Case, and the Weakness of the Estate on the Part of the De-

(a) See F. Droit 28, 49. 7 Ed. 3. 5. b.

(b) 47 H. 3. Droit 52. 31 Ed. 1. Droit 67.

[152.] mandant shall not out the Tenant of the Plea, which the (a) Law giveth him to join the Mife; but if the Writ be brought againſt the Tenant for Life, where the Remainder is over in Fee, there the Tenant may pray in Aid of him in the Remainder, and then they may join the Mife with the Demandant, &c. But where the Demandant, who hath the particular Eſtate, bringeth the Action, although he pray in Aid of him in the Reverſion to join the Mife, it is hard to be done, &c. But it ſeemeth reasonable, that the ſame Law which enableth him to bring the Action, the ſame Law ought to enable him for to join the Mife upon the Plea of the Tenant. 7 Ed. 3. 5. b. per Herle.

Writ of Annuity.

A Writ of Annuity lieth, in Caſe, where a Man granteth unto another a yearly Rent for Life, or for Years, or in Fee out of his Lands, or out of his Coffers, or to receive from his Perſon yearly at a certain Day; now the Grantee may ſue a Writ of Annuity for the ſame, &c. if he be behind at the Day of Payment, &c. And if it be granted out of the Land with a Claufe of Diſtreſs, then he may chuſe either to diſtrain for the ſame, and make it a Rent-charge, or he may bring a Writ of Annuity for the ſame. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff declare thereupon, then he cannot diſtrain for it after. And in like manner, if he do diſtrain for it and avow, then he ſhall not ſue a Writ of Annuity for the ſame Rent. But if a Man grant a yearly Rent for Life, for Years, or in Fee, and doth not expreſs in the Grant that it ſhall be taken out of any Lands or Tenements, nor any Diſtreſs granted for Non-payment thereof, then it is merely taken for an Annuity; and he ſhall not have any other Remedy for the ſame, but a Writ of Annuity.

(b) And this Writ may be ſued before the Sheriff in the County by Juſtices as well as in the Common Pleas; and the Form of the Writ in the County is ſuch:

The Plaintiff in Annuity had Judgment to recover Damages, and thereupon brought a Scire facias in B. R. to execute Judgment, and good. 24 Ed. 3. Fitz. Meſne.

The King to the Sheriff, &c. We command you, that you juſtice A. that juſtly, &c. he render to B. one hundred Marks, ten Quarters of Wheat and twenty Robes which are in Arrear to him, of the yearly Rent of one hundred Skillings, two Quarters of Wheat and one Robe which he owes to him, as he ſaith, as he can reaſonably ſhew that he ought to render to him, that we may bear no more Clamour, &c.

(a) If one recovers in a Writ of Cuſtoms and Services, he ſhall not have a *Scire facias* in another Writ of Execution, but only *Diſfringas*, &c. 10 Ed. 3. 15. 17 Ed. 3. 29. yet ſee 18 Ed. 3. 23. Execution ſhall be always had by *Scire facias*, notwithstanding (another) Execution had before. *Vide infra* B.

(b) Note; By *Salder*, if the Defendant ſhews an Acquittance of all Arrears, the Plaintiff ſhall

recover his Annuity, and have always a *Scire facias*, or a *Fi Fa'* afterwards. 30 Ed. 3. 22. See where nothing was in Arrear, but pending the Writ, and the Abbot recovered on a Plea to the Title, and had Judgment for the Annuity, and alſo for the Arrears, 39 Ed. 3. 38. but in a *Scire facias* he ſhall not recover the Arrears pending the Writ. 9 H. 12. adjudged in *Digge's* Caſe.

And

And the Form of the Writ in the Common Pleas is,

Command A. that justly, &c. he render to B. one hundred Marks and the Moiety of three Garments with costly Fur, and of two Garments with fine Linen, which are in Arrear to him, of the yearly Rent of ten Marks, and the Moiety of one Garment with Fur and of one Garment with fine Linen, which he oweth to him, &c. and unless, &c.

34 H. 6. 20.
3 H. 6.
Annuity 2.
16 Ed. 3.
Annuity 22.
If a Man bring Annuity and the same ex-

tinguish or determine pendent the Writ, the Plaintiff cannot have Judgment in the Writ, but is put to his Action of Debt. See 2 H. 6. 8. And Note, that Detinue pro quodam Scripto de debito, lies for a Deed of an Annuity. 15 Ed. 3. Brief 68z.

C And note, that in that Writ the Form is, *Quem ei debet*, where he demandeth other Thing than Money. And yet in a Writ of Debt the Form is, that he say in the Writ, (*a*) *Quas ei debet*, if not, that he demand Money; for if he demand Robes or Corn, or such like Chattels, the Writ shall be, *Quae vel quas ei detinet*, and not *debet*, &c.

And in Debt if a Man demand Money, and also ten Quarters of Wheat, then the Form of the Writ is,

Command A. that justly, &c. he render to B. ten Pounds, &c. which he owes to him, and ten Quarters of Wheat which he unjustly detains from him, &c.

D And if a Man have an Annuity of twenty Pounds to receive of A. and he grant ten Pounds of the same to another Man to receive of A. A. shall not be charged by that Grant, but the Grantor only by Writ of Annuity: But if he had granted ten Pounds, Parcel of the said Annuity, it seemeth then that the Grantee ought to charge him who ought to pay the twenty Pounds by a Writ of Annuity.

9 H. 6. 12.
& 13.

E And the Writ of Annuity ought to be brought in the County where the Grant was made; but an Annuity to receive from a Man of Religion, or a Body Corporate, or from a Church, ought to be brought where the Church or House is, or where the Seisin is alledged.

F And the Heir shall be charged by a Writ of Annuity upon the Grant of the Father, if he have Affets by Descent. But an Annuity shall not be maintainable against the Heir by Prescription, because it cannot be known whether he hath by Descent from the same Ancestor, &c. by whom the Annuity was first granted.

42 Ed. 3. 5.
acc. 15 Ed. 4.
16.

(a) Note also; This Writ does not lie after the Grant determined by Judgment, or otherwise, but Debt. 16 Ed. 3. Annuity 22. 15 H. 7. 1. and if the Annuity determines pendent the Writ, it abates, and therefore see (16 Ed. 3. Annuity 22) 11 H. 4. 34. if the Grantee of an Annuity for Life recovers the Annuity, and Arrears by Writ of Annuity, and two Years are Arrear after the Judgment, and then he die, his Executors shall have a *Scire facias* for the Arrears contained in the Judgment; but for the Arrears incurred after the Judgment, he shall have a Writ of Debt, and not a *Scire facias*. for the Annuity is determined, so that he cannot

recover it as an Annuity, *per Cur'*; but it is there said by *Peri* and *Thirn*. against the Opinion of *Houf.* that where the Grantee of an Annuity for Life with a Remainder to him for twenty Years, recovers in Annuity and dies, his Executor shall have a *Scire facias* always during the Term, because they have the Estate continuing in them, during the Term; *Quere* of an Annuity after the Grant determined. 9 H. 6. 12. If one recovers an Annuity, and the Annuity is after in Arrear, and then he dies, his Executors shall not have *Scire facias*, but Debt. 10 H. 6. 33.

V. 14 H. 4. 18. And a Writ of Annuity shall be maintainable against a Parson upon a Grant G made by his Predecessor with the Assent of the Patron and Ordinary; and so upon an Ordinance made by the Ordinary without the Patron, if he have *Quid pro quo*.

An Annuity granted by the Bishop with the Confirmation of the (a) Dean and Chapter, shall bind the Successor of the Bishop.

(b) And if a Man grant unto another forty Shillings, or a Robe, yearly at II such a Day, &c. after the Day he may demand the one or the other, at his Election. 8 R. 2. *Annuity* 53.

16 Ed. 3. And an Annuity shall be maintainable by a Parson against a Vicar, upon an Annuity 34. Ordinance of the Ordinary, if he have *Quid pro quo*.

20 Ed. 3. Upon Debate of an Advowson between a Prebend and a Prior, the Ordinary I Annuity 32. made a Composition and Ordinance, that the Prebend should have an Annuity of twenty Shillings, and the Prior the Advowson for ever, and that did charge the Prior in a Writ of Annuity and his Successors, (c) T. 9 R. 2.

1 Ma. Dyer And in the Time of Vacation the Patron and Ordinary may by their Grant K charge the Church for ever, as appeareth in the same Year.

9 H. 6. 33. And if the King grant one an Annuity for Life or Years, he ought to ex- L
If a Mangrant press in the Grant by whose Hands he shall receive the Annuity, as to say, 10s. Parcel of *By the Hands of the Sheriff of S. or of our Bailiff of our Manor of S.* and then Annuity of 20s. and in the Bailiff or Sheriff shall have Allowance upon his Patent shewed, if he hath Truth there is paid the same; and if he have not such Words in the Grant of Annuity, the no such An- Grant is void, for he cannot sue the King for it, and no Person is bounden to nuity, the pay the same unto him, if he be not expressed and named in the Patent, &c. Grant is void.

[153.] (d) And the Procefs in a Writ of Annuity is Summons, Attachment and Dis-
But if it be strefs: And for Default of Distrefs, &c. Procefs of Outlawry by the new Sta-
granted to re- tute made *Anno 23 H. 8. cap. 14.*

such a Sum, and there is no such Sum, yet the same is good to charge the Person of the Grantor. Vide Annuity 5. to receive in 10 l. or de 10 l. no Difference.

(a) Or by the Ordinance of the Commissary confirmed by the Bishop, 14 H. 4. 18. on a Debate of Court before the Commissary. See 11 H. 4. 84. and Note, the Ordinance is to be under Seal. 16 Ed. 3. *Grants* 654.

(b) See accordant 11 Ed. 3. *Annuity* 27. 29 *Aff.* 55. But Note a Diversity, if it be a Thing of Continuance, as Annuity or Rent, there he ought to bring his Writ of Annuity, or Assise, in the Disjunctive; *contra* if it be *pro hac Vice* only. 9 Ed. 4. 26. *per Litt.* 13 Ed. 4. 4. 43 Ed. 3. *Bar.* 19. 3 *Aff.* 175. 11 *Aff.* 8. L. 5 Ed. 4. 6. 17 Ed. 3. 73. 29 *Aff.* 55.

(c) *Viz.* By a Release of the Right of Patronage. 31 Ed. 3. *Grants* 60.

(d) And if the Defendant makes Default after Appearance, a *Distringas* shall issue *ad audiend' Judicium*, 2 H. 4. 1. *per Cur*; yet 29 Ed. 3. 3. a *Distringas ad respondend'* issued (to the Tertenant) where the Defendant made Default at the Day of *Procedendo*, after Aid by him had of the King and the Ordinary. 11 H. 4. 6. Judgment on Default of the Parson at the Day of Summons to them had and returned. See 8 H. 6. *Judgment* 262. See a *Distringas* against a Parson in lieu of a *Petit Cape*, and if he then makes Default, Judgment final.

Writ de Procedendo ad Judicium.

B **T**HE Writ to proceed unto Judgment lieth where Judges of any Court Post. 23. delay the Party, Plaintiff or Defendant, that they will not give Judgment for him when they ought so to do, &c. then the Party grieved shall have this Writ directed unto the Judges; and the Form of the Writ is such:

The King to the Mayor and Sheriffs of London, greeting: Because the giving Judgment of the Plaintiff which is before you in our Husting of London without our Writ, between A. and B. of a certain Trespass to the said A. committed by the aforesaid B. as it is said hath taken up long Delay, to the great Damage of him the said A. as we have received Information from his Complaint; We command you, that you proceed to give Judgment thereupon with as much Speed as it may be done, according to the Law and Custom of the said City. Witnesses, &c.

C And upon that Writ he shall have an *Alias* and a *Pluries* directed unto him, if they will not proceed, and afterwards an Attachment upon that directed **D** to the Coroners, &c. returnable into the King's Bench or Common Pleas, and it appeareth by the Writ that it lieth as well against Judges of Record as other Justices.

E (a) If any Man pray in Aid of the King in a real Action, and the Aid be granted, it shall be awarded, that he sue unto the King in the Chancery, and the Justices in the Common Pleas shall stay until the Writ of *Procedendo in loquela* come unto them. 1 Ma. Dyer 10. the Opin. contra.

And then they may proceed in the Plea, until it be come that they ought to give Judgment for the Plaintiff, and then the Justices ought not to proceed to Judgment, until the Writ cometh to them to proceed to Judgment, which is called a Writ *de Procedendo ad Judicium*. 7 R. 2. Aid de Roy 61.

And so it is, if the Defendant in a personal Action pray in Aid of the King, and the Aid be granted, now the Judges ought not to proceed until *Procedendo in loquela* comes unto them, and then they may proceed and try 27 H. 8. 9. Eliz. Dyer 101. 257. 258. V. 28 H. 6. 4.

(a) *Notes*: In all Pleas, but in those of Dower, where Aid of the King is granted, there is a Clause *quod non procedant ad Judicium Rege inconsulto*. But in a Writ of Dower, the whole Matter shall be discussed in Chancery before the Writ *de Procedendo* comes. 46 Ed. 3. 29. And *Note*; there ought to be in the *Procedendo* in Dower, an express Clause to proceed to Judgment; otherwise, if the Writ only commands to do Right and Reason, Judgment shall not be given. 26 Ed. 3. 58. A *Procedendo ad Judicium* was *quod ad finalem Discussionem procedant*, and thereon the Judges gave Judgment. 29 Ed. 3. 12. 3 Ed. 3. 3. *Note*; If the Tenant in a *Præcipe* prays Aid of the King, by Reason of the Warranty, the Warranty shall be tried in the Chancery, and a Writ shall be sent into

C. B. to take the Inquest; but if they plead in Chancery, and there it appears, that the Demandant has Right, the King shall not have a Writ to C. B. reciting the Matter, and commanding them to supersede, &c. for that Judgment shall be there given, *Quod Tenens eat in ac sine die*, 38 Ed. 3. 14. and *per Thorp*, there. The Right shall not be tried in Chancery, but in Case where the King has the Reversion, the Parson may, but does not pray in Aid, &c. 38 Ed. 3. 19 and therefore, if the King has a Release of the Annuity, and pleads it, it shall not be brought into Chancery. For the Aid is granted only to maintain or support the Parson, although he pleads it. 19 H. 6. *per Newton*. See 13 H. 4. 3.

the Issues joined; but yet they shall not give Judgment until a Writ cometh to them to proceed to Judgment.

And if the King by his Writ certify to the Justices that the Lands are seised into his Hands, &c. then they shall stay until the Writ *de Procedendo in loquela* be afterwards sent unto them.

And so, if it appear to Judges of (a) Record, that the Lands are seised into the King's Hands, or if it appear to the Court by pleading or shewing of the Party, that the King hath Interest in the Land, or shall lose Rent or Service, there the Court ought to stay until they have from the King a *Procedendo in loquela*; and if the *Procedendo* be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a Man (b) have Aid of the King, the *Procedendo* ought to make Mention of the Aid-prayer, and recite the same in the Writ, commanding them for to proceed in the Plea, otherwise it is not good.

And

(a) *Viz.* In Assise, by the Testimony of the Escheator, or by Affirmance of the Assise in another Writ. See 11 H. 4. 39. But *Note*; If the King purchases pending the Writ, yet this shall not abate the Assise. 11 H. 4. 86. 9 H. 7. 9. and 15. although the Party does not pray Aid. See accordant 11 H. 4. 71. if it appears of Record, as by the King's Writ, &c. that the King has (Claims) Interest; and if it be after Verdict, the Justices shall not give Judgment; *contra* if it be only a Nude or bare Surmise of the Party *dehors*; but see 3 H. 6. 6. Aid not to be granted in Trepass, without Prayer of the Party.

See a *Procedendo ad Judicium* after the Transcript of the Record certified into Chancery. 13 H. 4. 3.

(b) *Note*; 1. The Party cannot demand Aid after Adjournment of the Plea in another Term, for it ought to be demanded in the former Term, and before Plea pleaded. 3 H. 6. 5. *per Martin*. 2. His Aid-prayer is, where it is for his Advantage to have in Value, and then this ought to be specially entered in the Course of his Aid-prayer, or otherwise he shall not have in Value. 9 H. 6. 4. Sometimes for Feebleness of the Party's Estate, to plead (or pray) it, then *per Cott.* the Entry is Judgment, &c. *Si Rege inconsulto.* See 15 H. 7. 10. where a Tenant at Will shall have Aid of the King thereupon by Reason of the Temporalities only by those Words. See 9 H. 6. 3. *per Cott.* If one prays Aid of the King, because of the Reversion in him, if he says, that he holds for Life, the Reversion in the King, it is good, without shewing any Deed; and by such Plea, the Reversion is in the King at his Pleasure. 1 H. 7. 29. 11 H.

4. 86. 8 H. 6. 25. So his Bailiff shall have Aid.

Sometimes it is to try the King's Patents, as where the King confirms, &c. then only the Judgment is, *Si Rege inconsulto*, 28 Aff. 39. sometimes it is for (to preserve) the King's Interest, as 1 Aff. 1. and so for a Fee-farm Rent, &c. due to the King, 2 H. 7. 7. and then in case the King is not to lose, no Aid shall be granted, as if one demands Land by a Title puisne to the King's Interest. 35 H. 6. 56. *Note*; The Cause of the Aid is not traversable. 9 H. 7. 15. 27 H. 8. 28. For when the Parties come into Chancery, if any Interest can be shewn in the King, although it be entred that it was only a Surmise; so if the Cause of the Aid be not sufficient to prove an Interest in the King, yet if he can shew any other Cause, that is sufficient, a *Procedendo* shall not be granted, till the King's Title be discussed, 8 H. 7. 11. and therefore if Aid be granted on such a Cause, for which it is not of Right grantable, and afterwards a *Procedendo* is awarded, he shall not have Aid *de Novo* for another Cause. 9 H. 7. 8, 9. 3 H. 6. 6. adjudged. And *Note*; If Tenant in Fee-simple says, that he holds for Life, the Reversion in the King, whereupon Aid is granted, if another Title be not shewn in the King, a *Procedendo* shall be presently granted, and it is not sufficient there to alledge, that the Land is held of the King's Manor, which is Antient Demesne, for that the Tenant there has affirmed the Jurisdiction of the Court by the Aid prayed of the King, and it is no Mischief to him, for if he (after) disagrees to the Reversion, if the Plaintiff recovers, he may have a Writ of Disceit, 11 H. 4. 86. adjudged, and therefore, without some other Matter

G And if Conufance of Plea be granted, &c. in an Action real fued in the Common (a) Pleas, and afterwards in the Franchife, and the Tenant pray in Aid of the King upon a good Caufe, and hath the Aid granted; the *Procedendo* fhall be parted to them in the Franchife.

H And if the King write unto the Juftices to prorogue the Affife becaufe the Defendant is in his Service, yet the Juftices ought to proceed, and not to ftay for the fame.

I And if Verdict pafs for the Plaintiff in Affife of *Novel Diffiefin* before the Juftices of Affife, and before they give Judgment by a new Commiffion new Juftices are made, then the Plaintiff in the Affife may fue forth a *Certiorari* directed unto the other Juftices to remove the Record before the new Juftices, that they may proceed unto Judgment; and the Form of the Writ is fuch:

(b) *The King to his beloved and faithful E. greeting: H. hath fhewed unto us, that whereas he lately arraigned a certain Affife of Novel Diffiefin before our beloved and faithful H. of T. and B. our Juftices lately affigned to take the Affifes, &c. by our Writ againft R. &c. and others, &c. contained, of Tenements in L. and although you and the aforefaid B. took that Affife according to the Law and Custom of our Realm; nevertnelefs, by reafon of our certain Commiffion made to our beloved and faithful I. of C. and I. of I. of all Affifes, Juries and Certificates before our Juftices whomfoever in the County aforefaid, by our Writs arraigned and taken, Judgment upon the Verdict of the Affife aforefaid yet remains to be given, to the great Damage of him the faid H. wherefore it is expedient and neceffary, that the aforefaid I. of C. and I. may be certified upon the Record and Procefs of the Affife aforefaid had before you and the aforefaid B. We command you, that without Delay you fend the Record and Procefs, &c. touching the fame, to the aforefaid I. of C. and I. under your Seal diftinctly and openly, and this Writ; We alfo command I. of C. and I. that having received and feen the Record and Pro-*

Matter fhewn, a *Procedendo* fhall be granted. And Note; if the King be intitled to the Reversion or Remainder by purchafe *de Novo*, and not only by Plea of the Tenant on the Aid prayed, no Search fhall be granted further, if Aid has been demanded. or if the King has leafted to the Tenant, &c. See 11 H. 4. 86. 9 Ed. 4. 12. and in Aid granted in personal Actions, no Search fhall be for the King. 27 H. 8. 28.

(a) See 8 Ed. 3. *Procedendo* 7. and therefore, where the Tenant of a Franchife prays Aid of the King, and thereupon the Plaintiff fues a Return, at the Return Conufance was granted again. See 10 Ed. 3. 3. and 21 Ed. 3. 38. yet it was faid, that thofe in the Chancery would not grant a Writ to the Bailiffs of the Franchife.

(b) In an Affife, the Party alleges, that the Lands were feized into the King's Hands, and found fo by Examination, and afterwards a *Pro-*

cedendo in loquela non ad Judicium was granted, and the Parol put without Day, by the not coming of the Juftices, and a general Re-attachment was fued before new Juftices in the fame County, and all the Records delivered to them, and on a Plea of *Null Tort, &c.* the Inqueft found for the Plaintiff, and now a fpecial Writ of the King came, rehearing all the Matter, and commanding, *Quod non procederent ad Judicium Rege inconfulto*; and it was adjudged, 1. That by the general Re-attachment, the Plea of the Party was not terminated. 2. For that no Caufe to give Day, *ad fequend' verfus Regem*, appears before Verdict, the Verdict was well taken; otherwife, if the Juftices had afferted it on the Record, that it appeared by Plea of the Party, and Examination, that the Lands were in the King's Hands. 3. That they could not proceed to Judgment, without a *Procedendo ad Judicium*. 9 H. 6. 40.

cesss aforesaid, they proceed to Judgment aforesaid, according to the Law and Custom of our Realm. Witness, &c.

And the Party Plaintiff may sue another Writ unto the new Justices, that when the Record is sent unto them by the old Justices, that they receive and look upon the Record, and then to proceed to Judgment; and the Form of the Writ is such:

[154.] *The King to his beloved and faithful R. of C. and I. of I. &c. Justices assigned to take the Assises, &c. (as above until) before our beloved and faithful I. B. and you the aforesaid I. of C. our Justices lately, &c. of Tenements in L. and afterwards, at the Prosecution of him the said H. suggesting to us that the aforesaid B. and you the aforesaid I. of C. had taken that Assise, and had deferred giving Judgment, &c. We commanded the aforesaid B. that he should distinctly and openly send the Record and Procces of the Assise aforesaid had before him and you the aforesaid R. of C. together with the original Writ, &c. to you the aforesaid R. of C. and I. of I. and our beloved and faithful C. of L. our Justices afterwards assigned, &c. and our Writ which thereupon came to him, and by our other Writ we gave in Charge to you and to the aforesaid R. of C. I. of I. and the aforesaid C. of L. that having received and seen the Record and Procces aforesaid, you should proceed to give Judgment, according to the Law and Custom of our Realm; and although the said B. hath sent the Record and Procces of the Assise aforesaid before you the aforesaid R. of C. I. of I. and the aforesaid C. of L. nevertheless Judgment in the Assise aforesaid yet remains to be given, to the great Damage of him the said A. We therefore willing to speed the Matter aforesaid as much as may be according to the Law and Custom of our Realm, and that compleat Justice be further done to him the said H. do command you, that you, or two of you, having seen and examined the Record and Procces aforesaid, proceed to give Judgment aforesaid according to the Law and Custom of our Realm. Witness, &c.*

And upon that Writ if the Justices do delay to give Judgment, he may have A an *Alias*, and afterwards a *Pluries* directed unto the same Justices, *vel causam nobis significetis*; and if the Justices upon the Writ will not give Judgment according to the Writ, *Quere* whether the Plaintiff may have an Attachment against them, because they are Justices of Record.

But see in the Register, among the Writs to remove Records, many Writs B to proceed to Judgment, &c. of several Forms.

And if the Chaplain of a Chantry bring an Assise of *Novel Disseisin* against C another Chaplain for Lands, and the Defendant claimeth the same Chantry by the King's Collation and prayeth in Aid of the King; now if the Defendant cannot shew Title in the Chancery for the King, he may have a *Proccedendo*, directed unto the Justices of Assise, that they proceed unto the Taking of the Assise, notwithstanding the Allegation made of the King's Collation; and he may sue the like Writ where the Defendant doth pray in Aid of the King in Assise by the King's Grant, and have that granted, if he cannot shew Matter in the Chancery, which proves the King's Title, the Plaintiff shall have a *Proccedendo*, that they proceed to take the Assise, notwithstanding the Allegation made of the King's Grant.

D And there are divers Writs in the Register directed unto Justices of Assise, that they do not proceed in the Assise against the Defendant *while he is in the Service of the Lord the King* in the War, but to continue them; but these Writs are made by Virtue of an Act of Parliament made for that Time, as it seemeth. But if the King certify by his Writ unto the Justices, that the Lands are in his Custody, by Reason of Nonage of any Heir, or by an Inquisition taken and returned in the Chancery, commanding that they do not proceed, the King not consulted with; then it seemeth that the Justices ought to stay for the Time, although there is not any Office found nor returned; for they are bound to give Credit to the King's Certificate, although that it be not true, &c. And in Attaint for the Plaintiff, if he be in War in the King's Service, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain Day, &c.

E And in Assise of *Novel Diff.* if the King send his Writ to the Justices, reciting that the Defendant holdeth the Land of the King by Gift by his Charter, for Life, commanding them that they do not proceed, the King not consulted: Now although the Tenant will not plead the same, it seemeth, that by that Writ the Justices ought to stay their Proceeding. So if the King recite in the Writ, the Tenant is in his Service in War beyond the Seas, or in *Scotland*, and that he holdeth for Life by the King's Charter of the King's Gift, commanding them not to proceed, the King not consulted, but to continue the Assise until a certain Day, there, it seemeth, they shall stay their Proceedings; for the Tenant cannot plead it, &c. For if the Escheator will say, that he hath seized the Lands into the King's Hands in an Assise brought by any Person, in that Case the Court shall surcease, *a fortiori* by the King's Certificate; and divers such Writs are in the Register, &c.

F In Assise of Lands and Tenements, the Defendant pleads two or three Records in Bar to divers Parcels of the Land which are in the Treasury, and the Plaintiff denieth those Records, the Defendant ought for to remove those Records out of the Treasury by a *Certiorari* directed unto the Treasurer and Chamberlains of the Exchequer. And if he sue forth such a *Certiorari* to the Treasurer and Chamberlains, and they certify some of the Records in the Chancery to the King, and moreover certify, that there are other Rolls of the same Justices, of which they have not yet made full Search: Upon that Certificate made by the Treasurer and Chamberlains in the Chancery, the King shall send his Writ unto the Justices, commanding them to continue that Assise, until the next Assises, that full Search may be made of those Records, so that the Tenant lose not his Lands for Failure of the Records; and such Writ is in the Register.

G And if a Man sue an Assise before the Justices of Assise, and the Tenant plead Bastardy in the Plaintiff, upon which a Writ is awarded to the Bishop to certify at the next Assises; and before the next Assises the King maketh new Justices, and the antient Justices do certify the Record of Assise unto the Treasury, the Plaintiff ought for to sue a *Certiorari* to remove the Record out of the Treasury into the Chancery by a Writ to the Treasurer and Chamberlains, and upon that Record sent into the Chancery, he shall have a Writ

Writ de Quod ei deforceat.

of *Mittimus* sent unto the Justices reciting the Matter; and in the End of the Writ shall be this Clause:

[155.] *That what is just may be done to the Parties aforesaid in the said Assise, we send to you the Record and Proceſs of the Plea aforesaid under the Foot of our Seal, which for certain Reasons we caused to be removed before us in our Chancery, commanding you, that having inspected them, and also the Certificate of the said Bishop hereupon sent before you, as it is said, and having received of the Sheriff of the County aforesaid the original Writ thereof, which remains in his Power, as appears to us by the Inspection of the same Record and Proceſs, you proceed again in the same Assise, according to the Tenor of the Writ and Plea aforesaid, and to do to the said Parties that which of Right and according to the Law and Custom of the Realm ought to be done; and we command the same Sheriff, that he deliver to you the said Writ at your next Session in the County aforesaid. Witness, &c.*

And if a Man sue an Assise before Justices against one Tenant, and in the same Assise he name the Mayor and Commonalty of any Town as Disseisors, or Bailiffs of any Liberty as Disseisors, unto the End that they may not have Conufance of the Plea: Or that they shall not make the Panel; now he may sue a special Writ in the Nature of an *Audita Querela* directed unto the Justices of Assise to enquire of the Matter, and to do Right unto the Parties, and if it be found, it shall abate the Assise. *Vide Statute 9 H. 4. cap. 5.* and see the like Statute made for the Sheriff, *Anno 11 H. 6. cap. 2.*

But the Sheriff or Bailiff ought to shew the Matter unto the Court and pray that it be enquired of, &c.

Writ de Quod ei deforceat.

THE Writ of *Quod ei deforceat* lieth, where Tenant in Tail, or Tenant B in Dower or by the Curtesy, or for Term of Life, lose their Lands by (a) Default in a *Præcipe quod reddat* brought against them; then they have not any other Remedy, if they were summoned according to the Law, &c. but this Writ of *Quod ei deforceat*: And this Writ is given by the Statute of *Westm. 2. cap. 4.* and the Writ is mentioned in the Statute; and the Form is such:

The King to the Sheriff, &c. Command A. that, &c. he render to B. who was C the Wife of C. one Messuage with the Appurtenances in N. which she claims to be her reasonable Dower; or thus, which she claims to be of her reasonable Dower, and that he the said A. unjustly deforceth her, as she says, &c.

(b) And if the Tenant in Frankmarriage bring the Writ, then the Writ is, D

(a) And yet the Writ or Count do not suppose any Recovery, 18 H. 6. 25. on losing by Default in a *Cessavit*. 8 R. 2. Brief 931.

(b) And it is good, without shewing of whose Gift in the Count. 29 Ed. 3. 47. 30 Ed. 3. 31. 6 H. 4. 2.

That justly, &c. he render to B. one Messuage with the Appurtenances, which she claims to be her Right and Marriage, and that he the said A. unjustly deforceeth her, &c.

And if he be Tenant in Tail, then the Writ is,

That he render, &c. which he claims to hold to him and his Heirs of his Body issuing, and the aforesaid A. unjustly deforceeth him.

And for Tenant for Life the Writ is,

Which he claims to hold for the Term of his Life: Or for Tenant by Curtesy, Which he claims to hold by the Law of England.

And the Register is, That this Writ for Tenant by the Curtesy is by Equity of the Statute. But if the Tenant in Tail, or such other Tenant who hath a particular Estate, lose by Default where he is not summoned, &c. then he may have a Writ of Disceit, or a *Quod ei deforceat*, as he pleaseth.

E (a) If a Man lose by Default in an Action of Waste sued forth against him, he shall not have a *Quod ei deforceat* for the Verdict which found the Waste.

And if a Man lose any Land by Default in a Writ of Right in a Court Baron, he may remove that Record into the Common Pleas, and then have a *Quod ei deforceat* upon that Record; and so he shall have the *Quod ei deforceat*, although he do not remove the Record; but then it seemeth, that the *Quod ei deforceat* shall be sued in the Common Pleas or in the Court Baron where he loseth the Land, as he pleaseth; *tamen quære.*

F (b) And the *Quod ei deforceat* lieth against a Stranger to the Recovery; if a Man recover by Default, and maketh a Feoffment, the *Quod ei deforceat* shall be brought against the Feoffee.

And if a Woman lose by Default, and taketh Husband, she and her Husband shall have the *Quod ei deforceat*: But if Tenant in Tail loseth by Default and dieth, his Heir shall not have the *Quod ei deforceat*, but a *Formedon*; for that is his Writ of Right.

G Where a Woman hath Dower assigned her in the Chancery for the Nonage of the Heir, who is in Ward to the King; and afterwards the Heir at full Age sueth a *Scire facias* in the Chancery against the Wife to avoid that Endowment, and recovereth in that *Scire facias* by Default of the Wife: Now the Wife shall have a *Quod ei deforceat* in the Common Pleas upon that Recovery.

And so if a Man recover in the King's Bench any Land by Default, upon a *Scire facias* sued out of any Record which is there, the Tenant who lost by Default shall have his *Quod ei deforceat*, and shall sue the same in the Common Pleas.

(a) So in Waste. 3 H. 6. 29. per Rolf contra. Co. Lit. 355. b. 1. And. 271. 3 Cro. 263. [See 44 Ed. 3. 42. 2 H. 4. 21. 21 H. 6. 56.]

Note; On a Recovery by Default in a Court Baron, a *Quod ei deforceat* lies in the King's Court, and therefore it is no Issue to say *Nul tiel Record ne Recovery*, for that it appears the Tene-

ments were lost by Default. 2 Ed. 4. 11. 10 Ed. 4. 2. 10 H. 7. 9. 6 H. 4. 3.

(b) See 44 Ed. 3. 43. accordant, but it is doubted, 11 Ed. 3. and 16 Ed. 3. For by *Pulston*, if the Feoffor recovers in a Writ of Right, the Feoffee cannot tender Suit and *deraigne*, &c.

46 Ed. 3. 21. If two Coparceners Tenants in Tail lose their Land by Default, they shall II join in a *Quod ei deforcean*, and yet the Default of the one is not the Default of the other. *M. 46 Ed. 3.*

And in a *Præcipe quod reddat*, if the Tenant for Life or in Tail appear, and I after depart in Despite of the Court, he shall lose his Land, and yet he shall have a *Quod ei deforcean*, for that Recovery is by his Default, because he did not appear when he was demanded.

And if Tenant in Tail, or Tenant for Life, after the Mife joined in a Writ of Right depart in Despite of the Court, he loseth his Land, and there he shall not have a *Quod ei deforcean*, because Judgment final shall be given against him in that Case.

[156.] (a) If the Husband and Wife be seised of Land in the Right of the Wife, A Old N.B. 155. for the Life of the Wife, and they lose the Land in a *Præcipe quod reddat* by Default, yet they shall have a *Quod ei deforcean*, &c.

contr.
10 Ed. 4. 2.
contra.

And if Tenant for Life loseth his Land in a *Cess.* brought against him by Default, yet he shall have a *Quod ei deforcean* by the Statute of *West. 2. H. 5 Ed. 3. & M. 9 Ed. 3.*

And if Tenant by Receipt upon the Default of Tenant for Life appeareth, B and is received, and pleadeth, and afterwards loseth by (b) Action tried: Yet the Tenant for Life shall have a *Quod ei deforcean*, for the Judgment is given against him by his Default.

And if the Tenant vouch, and the Vouchee will not appear, for which the Tenant loseth by Default of the Vouchee, it is to see whether the Tenant shall have a *Quod ei deforcean*; for he loseth the Land by the Default, although it be not his own Default, for the Statute is, *Et cum temporibus retroactis cum aliquis amisisset terram suam per defaultam, non habeat aliud recuperare quam per breve de rehto*: And there it doth not say, *per defaultam suam*, but only by Default. But after in the Statute, it saith, *Provisum sit, quod de cætero non sit eorum defaulta eis ita præjudicialis, &c.* And by that it seemeth that the Tenant ought to make Default. But it seemeth that the Default of the Vouchee, is the Default of the Tenant, and so Default in both: *Quære* of that. But if the Tenant vouch, and the Vouchee appeareth and entreth into the Warranty, and afterwards loseth by Default; now if the Tenant lose by the Default of the Vouchee, he shall not have a *Quod ei deforcean*, because he shall have Judgment to recover over in Value against the Vouchee, by the Default of the Vouchee, so as he shall have Recompence. But if the Vouchee doth not appear, but maketh Default, then he shall lose the Land by the Default of the Vouchee; but that is not the Default of the Tenant, and therefore *Quære* of that Case.

11 Ed. 4. 11.

And if the Husband and Wife lose by Default the Land of the Wife, which C she holdeth for Term of Life, if the Husband dieth, she shall not have a *Quod ei deforcean*, but a *Cui in vita*, for it is a Demise made by the Husband. And when he bringeth the *Quod ei deforcean*, he counteth that he was seised of

(a) 4 Ed. 3. pl. 5. contra. 5 Ed. 3. pl. 16.
26. 8 R. 2. Brief 931.

(b) See 33 Ed. 3. *Quod ei deforcean* 17. 8 H.
4. 5. 33 Ed. 3. *Avouery* 255. 10 H. 7. 14 or
29. *Nat. B.* 154.

the Land in his Demefne, as of Freehold, or in his Demefne in Tail, without fhewing of whose Leafe or Gift he was feifed; and he ought to alledge Efples in himfelf, &c. and then the Defendant ought to deny the Right of the Demandant, &c. and fhew, how that another Time he recovered the Land againft the Demandant by Formedon or other Action, and fhall fay in the End of his Plea, *That he is ready to maintain his Right and Title aforefaid by the Gift aforefaid, &c. wherefore he prays Judgment, &c.* And then the Demandant in the *Quod ei deforceat* fhall traverse that Title, or may fhew Matter to bar that Title, &c. but he fhall not make Defence, and then plead in Bar, as he fhall do in the Formedon, &c.

S 48 Ed 3 8.
acc. 2 Ed. 4.
13, 11, acc.
The Tenant
in the Quod
ei deforceat
may plead any
Bar as in other
Actions, and
then the De-
mandant can-
not vouch by
the Statute of
46. quod nota.

West. 2. cap. 4. But if he make his Bar by the firft Recovery, then he may. 33 H. 6. 46.

Writ de Attornato faciendo vel recipiendo.

D *THE Writ de Attornato faciendo or recipiendo* lieth, where a Man ought to do Suit at the County, or at the Hundred, or Wapentake, or other Court, and he would make Attorney for him to appear at the fame Court, &c. And if he be in Doubt whether the Sheriff will admit fuch a Man for his Attorney which he maketh; then he who would make fuch Attorney may fue that Writ directed unto the Sheriff or Bailiff of the Hundred, commanding them to receive fuch a Man to be Attorney for him to appear, &c. and the Writ is fuch:

Vide ant. 25.

The King to the Sberiff, &c. Because it is provided by the Common Council of our Realm, that every free Man who owes Suit at the County, Titbing, Hundred, Wapentake, may freely make his Attorney to do his Suit for him; We command you, that the Attorney whom S. fhall make in his ftead to do Suit for him at your County aforefaid, your Titbing of A. and B. Hundred of C. and D. your Wapentake of E. and F. you receive in the Place of the faid S. for this Purpose without Difficulty. Witnefs, &c.

Otherwise unto the Bailiff of a Hundred, thus:

The King to his Bailiffs of the Hundred of feven Hundreds of Cobham and Bray, greeting: Because it is provided by the Common Council of our Realm, &c. who owes Suit to the Hundred may freely, &c. We command you, that the Attorney, &c. at the aforefaid Hundred of feven Hundreds of Cobham and Bray, you receive in his ftead, &c.

Otherwise unto the Bailiffs of another Lord:

The King to the Bailiffs of A. of I. greeting: Whereas by the Common Council, &c. who owes Suit to the Court of the faid Lord may, &c. We command you, &c. at the Court of your faid Lord of I. you receive in the Place of him the faid S. for this Purpose without Difficulty. Witnefs, &c.

And by that it appeareth, that the Tenant may make Attorney by his Letters Patent to do Suit at the Court of his Lord. And if the Tenant by his Letters Patent under his Seal make Attorney for him to do Suit for him at the L. Court, or at the Hundred, and the Bailiffs will not admit of him, &c. then he fhall have a Writ unto them in this Form:

Writ de Attornato faciendo vel recipiendo.

The King to the Bailiffs of the Dean and Chapter of the Church of the blessed Mary of Lincoln of C. or of the Hundred of S. greeting: Because, &c. (as before, until) We command you, that the Attorney whom S. shall make to be his Attorney by his Letters Patent in his Place to do Suit for him at the Court of the said Dean and Chapter of C. or at the Hundred of the said Dean and Chapter of C. you receive in the Place of him the said S. for this Purpose without Difficulty, for this Time, of our especial Favour, &c.

And for the Guardian there is another Writ, thus:

The King, &c. We command you, that the Attorney whom S. Guardian of the Land and Heir of R. will make to be his Attorney in his Place to do Suit for him in the Name of the said Heir, &c. you receive in the Place of him the said Guardian for this Purpose without Difficulty, &c.

Or thus to the Bailiffs of the King:

[157.] *The King to his Bailiffs of the Honour of Peverel in the County of N. greeting: Because, &c. We command you, that the Attorney whom S. shall make in his Place to do Suit for him at our Court of the Honour aforesaid in the County aforesaid, you receive in the Place of him the said S. &c.*

And if the Lord of any Tenant be in Ward to the King for the Nonage of A his Heir, because he holdeth other Lands of him *in Capite*, &c. and his other Lords will distrain for Suit during the Time the Lands are in the King's Hand or in the Hands of his Committees, then the King or his Committees shall have a special Writ unto the Bailiffs of the other Lords, that they do not distrain the Heir, nor in the Lands, &c. during the Time that he is in the King's Hands, or in the Hands of his Committee; and if he have distrained them, that they deliver back the Distress again; and that Writ appeareth in the Register.

And if the King hath any Lands or Tenements in Ward during the Nonage of an Infant, and the King in Chancery assigns Dower unto the Wife of the Husband who was Father to the Ward, of Lands holden of other Lordships; now if the other Lords will distrain the Tenant in Dower for Suit at their Court during the Time the Lands are in the King's Hands, the Wife shall have a Writ unto the Bailiffs of the other Lords, commanding them that they do not distrain her. And recite in the Writ all the special Matter; and if they have taken any Distress, that they deliver it back again.

If a Man make an Attorney to do Suit for him at the County or Hundred or other Court, and the Bailiffs will not admit him for his Attorney; or if the Bailiffs do admit him for Attorney, and afterwards discharge him after the Year; supposing that he ought not to continue Attorney for the Party above one Year; or for any other unreasonable Cause they discharge him to be Attorney for the Party; then the Party may have a special Writ directed unto the Bailiffs, &c. commanding them that they receive him for his Attorney; and thereupon he may have an *Alias* and a *Pluries* and an Attachment against them returnable in the Common Pleas, or in the King's Bench, if they will not admit him for his Attorney, or return Cause upon the *Pluries*, which shall be allowable, wherefore they do not admit him; and the Form of the Writ is such:

The King to the Bailiffs of A. of the Hundred of B. greeting: It is shewed unto us on the Behalf of C. that whereas by our Writ he made his Attorney to do Suit for him at the aforesaid Hundred of your Lord of B. in the same Hundred before you, and the same Attorney by the same Writ being admitted for this Purpose, hath hitherto done that Suit, as the Custom is in our Realm, you of your own Presumption voluntarily insinuating, and pretending Cause that the Power of such Attorney ought not to continue above one Year, do not permit him the said C. to do his Suit by his Attorney aforesaid, to the great Damage and Grievance of him the said C. at which we very much wonder and are moved: And because the Virtue of our Writs for making such Attorneys is not limited, neither is the Term limited to the Persons who are required for this Purpose; We being willing to apply a Remedy hereupon, that the said C. or others may not be unduly vexed or aggrieved by the Cause aforesaid, command you, firmly enjoining that for the future desisting from bringing such voluntary and undue Vexations and Grievances to the said C. or to others for the said Cause, you permit him the said C. to do his Suit aforesaid, by his said Attorney without any Difficulty whatsoever, according to the Tenor of our former Writ to you thereupon directed. And so behave yourselves in this Matter, that the aforesaid C. by the Cause aforesaid be not put in Default, nor be losing in any Thing, and that we may be no more solicited hereupon, whereby we ought to put our Hand to this in another Manner. *Witness, &c.*

- C Note, That the Party may make Attorney by the King's Writ directed unto the Bailiffs, commanding them for to receive such Person for his Attorney. Or he may have a Writ out of the Chancery directed unto the Bailiffs, or Sheriff, to receive any such Person for his Attorney, that he will present unto the said Bailiffs or Sheriffs to be his Attorney to do his Suit; or he may make Attorney by Letters Patent directed unto the Bailiffs without suing forth any such Writ.

And if a Man sue forth a Writ directed unto the Bailiffs to admit one for Attorney to do his Suit for him, and the Bailiffs refuse to admit him; now the Party who sued forth the Writ shall have an Attachment against the Bailiffs for that Refusal, without suing forth an *Alias* or a *Pluries* directed unto them.

And so the same Law is, if the Tenant by his Letters Patent maketh one Attorney to do his Suit for him, and the Sheriff or Bailiff of the Court doth refuse to admit him for his Attorney: Upon that Refusal, the Party shall have an Attachment against the Bailiff, &c. although he hath not sued forth any Writ directed to him before, because they do against the Statute, which requireth, that they admit him for Attorney whom the Tenant will make to be his Attorney.

- D And he shall have the like Writ against the Bailiffs of any other Lord, who refuse to admit an Attorney to do Suit for the Tenant in any Court-Baron, and that Writ appeareth in the Register.

THIS Writ lieth where the Tenant holdeth his Land to do Suit at the A County-Court, Hundred, or other Court-Baron, or Wapentake or Leet, and he who ought to do the Suit is in Ward unto the King, or his Committee, and the Lord of whom he holdeth by such Service, will distrain him to do his Suit at his Court during the Time he is in Ward unto the King or his Committee; his Guardian shall sue this Writ unto the Sheriff, or Bailiffs of the Court, that they do not distrain him, &c. to do Suit during the Term he is in Ward to the King or his Committee; and the Form of the Writ is such:

To the Bailiffs of A. of I. greeting: Whereas according to the Law, &c. we ought not to do Suit at the Court of any Person by reason of any Lands and Tenements whatsoever being in our Hand or in our Ward, and those Persons to whom we have committed such Wardship ought to hold those Wardships during the Custody as freely and quietly from all Suit, as if we kept them in our own Hand; We command you, that by reason of the Lands and Tenements of I. deceased, which he held of us in Chief, and which are in the Custody of him the said R. of our Grant, you do not distrain or cause him to be distrained to do Suit at the said Court of your Lord of I. during the Custody aforesaid, and the Distress, if any, &c.

And the like Writ shall be for Tenant in Dower, where she is endowed in B the Chancery of Lands which are in Ward to the King, which Lands are holden of other Lords; now if the other Lords will distrain the Tenant in Dower to do Suit for those Lands which she holdeth in Dower, she shall have a Writ to discharge her, which is such:

The King to the Bailiffs of A. of B. greeting: Whereas according to the Law, &c. (as above, until) or in our Ward, and Women holding Lands or Tenements in Dower of such Wardships ought to hold them as freely and quit from all Suit during these Wardships, as if we kept the said Lands and Tenements in our own Hand; We command you, that you do not distrain M. and R. his Wife, by reason of the Lands and Tenements which were H.'s in F. which he held of us in Chief, and which the said R. and M. hold in Dower of him the said R. of the Gift of the aforesaid H. her former Husband, and of the Inheritance of the Son and Heir of A. within Age being in our Wardship, to do Suit at the Court aforesaid of your Lord, during our Wardship aforesaid, and the Distress, &c.

And if the Heir be in Ward of the King and also his Lands, and afterwards the Tenants Paravail who hold of the Heir are distrained by other Lords, of whom the Heir holds his Lands, to do Suit unto the Lord's Court, these Tenants shall have a Writ directed unto the Lord's Bailiff to discharge them of the Suit; and the Writ is such:

The King to the Sheriff of Nottinghamshire, greeting: Whereas according to the Law and Custom of our Realm no Person who holds of Heirs being within Age and in our Custody, is bound to do Suit at the County, Hundred, Wapentake, or other Court, for Lands and Tenements of those Heirs being in our Hand, during the Custody aforesaid; We command you, that you distrain not or cause to be distrained the Tenants of the Abby of Detley of certain Lands and Tenements of Roger, the Son and Heir of Roger Bellers deceased, in Chilwell, (which he held in Chief of Lord Richard lately King of England, because the Lands and Tenements of the same Heir in the said Town are in our Hand by reason of his Minority) to do Suit at the Wapentake of B. during the Custody aforesaid.

And

C And if the Heir and his Lands be in the King's Ward, for Lands holden of the King *in Capite*, and afterwards the other Lords, of whom the Heir holdeth Parcel of his Lands, will distrain for any Service or Rent to them due, then the King or his Committee may sue a Writ for them to surcease from such Distress; and the Writ is such:

The King to the Bailiffs, &c. Whereas Heirs being within Age and in our Ward (a) ought not, nor are bound to do any Services during those Wardships, according to the Law and Custom of our Realm; We command you, that the Distress which is made by the Abbot of W. upon the Tenant of the Heir of William of W. (who held of us in Chief) being within Age and in our Custody, for Homage, Fealty and other Services to be done by the said Heir to the said Lord, you do wholly supersede during the Custody aforesaid, and the Distress, if any, &c.

And also the Tenant in Dower shall have such Writ, if the Bailiff of other Lords will distrain her, for the Relief of the Heir, or other Services, during the Time that the Heir's Lands are in the King's Custody, or in the Custody of his Committee. And it seemeth, that he may sue this Writ directed unto the Lord himself, as well as to the Bailiffs, or unto them both.

D Note, That if a Man holdeth of another to do Suit to his Mill, &c. if he do not the Suit, he shall have a *Secta ad Molendinum* against him, and by the same Reason, if a Man hold of another Lord to do Suit at his Court in the Manor of D. if he do not the Suit, the Lord may have a Writ of *Secta ad Curiam suam faciend'* as well as the other Writ. But yet there is no such Writ in the Register, because he may distrain (b) for that Suit, and shall not have any other Profit, but only Appearance in his Court. But in the other Case [159.] *de Secta ad Molendinum*, he shall have other Profits by the Suit, the Toll of the Grain he shall grind there, and for that Profit it seemeth the Action of *Secta ad Molendinum* was given, and for the Suit of the Court but only a Distress; *tamen quere.*

A If the King have Lands by Forfeiture or Escheat, and lease them for Life, at Will, or in Tail, and if the Lord of (c) whom the Lands are holden will distrain the King's Committee or Lessee for Suit or other Services, he shall have a special Writ unto the Lord's Bailiff to surcease, &c.

V. 31 H. 8. 25.
33 H. 6. 7.
Stamf. 38. H.
3 Ed. 3. 10.
45 Ed. 3. 6.

And if Lands descend unto divers Coparceners, for which one Suit shall be done at the Lord's Court, if Parcel of those Lands come into the King's Hands, then he shall have a special Writ to discharge him of the Suit (d) for the Time they shall be in the King's Hands; which shall be such:

(a) Note, All the Services are gone during the King's Seisin; for the mesne Seigniorie are suspended by the King's Seisin, who is Lord Paramount, *Bras. lib. 1. fol. 87.* but it seems that the Rent (remains) although the Distress be suspended; but the Lords must sue to the King by Petition, for the Surplussage above that which they are charged to the King, to be recovered. 24 Ed. 3. 24 39 Aff. 5. 13 H. 7. 15. *per Keb.* Where he may distrain at full Age of the Infant, and after Livery sued, for all the Arrears, above that for which they were charged to the King. See *Stamf. Prærog. 9. 39 Ed. 3. Relief 1. 26 H. 8. 8.*

(b) See 6 H. 3. *Voucher 273. Secta ad Hundredum brought, que facere Debet & Sibi.*

(c) And Note; If the King has a Feoffment by Forfeiture or Purchase, if he does by Covin alien them to hold of himself, the Lord may sue by Petition, and have a *Scire facias* against the Patentee to repeal the Patent, and to release the Land, and then it shall be granted, *Tenent' de Capitali Domino*, 20 Aff. 124. 46 Ed. 3. *Petition 19. 17 Ed. 3. 59.* but this is intended of an Alienation in Fee. 3 Ed. 3. 10.

(d) *Quere*, If A. holds Lands charged with Suit to the Hundred by Prescription, and encloses the King of Parcel, if all the Suit is gone.

Writ pro Exoneracione Sectæ ad

The King to the Sheriff, &c. greeting: Whereas it is provided by the Common Council of our Realm, that if any Inheritance from which only one Suit is due to several Heirs, &c. or devolves to others by Sale, &c. then only one, &c. hath been accustomed to be done, and a certain Inheritance (which was H.'s of B. of the Barony of B. from which said Barony only one Suit is due to your said Court) is devolved by Sale, as we understand, to our beloved and faithful W. of H. and I. Son and Heir of R. of S. being within Age and in the Custody of our beloved and faithful R. of N. by our Commission. And we, according to the Law and Custom, &c. ought not to do any Suit by reason of Lands and Tenements being in our Hand and in our Ward, and those to whom we have committed such Wardships ought to hold them as freely, and quit from all Suit, as if we kept the same in our own Hand; We command you, if it be so, that then you do not distrain the said W. of H. to do Suit at your County aforesaid for the Lands and Tenements of the said Barony during the Wardship of the said Heir abovementioned, &c.

And if the Wife be Tenant in Dower of any Land, she shall not be distrained to do Suit for that Land which she holdeth in Dower, if the Heir have sufficient Land in the same County to be distrained for the same. And if she be distrained, then she shall have such Writ :

The King to the Bailiff of the Hundred of N. greeting, &c. Whereas according to the Law and Custom of our Realm Women, Tenants in Dower, ought not to do Suit at the Hundred or the Court of any Person for their Lands and Tenements which they hold in Dower; We command you, that you do not distrain A. who was the Wife of B. to do Suit at the Hundred aforesaid for the Lands and Tenements which she holds in Dower, and the free Tenement which was her said former Husband's, contrary to the Law and Custom of our Realm, so long as the Heir of the aforesaid B. hath other Lands and Tenements in your Bailiwick, whereby he may be distrained to do the Suit for the Dower aforesaid, and the Distress, if any, shall be made, &c. that you cause it to be delivered without Delay, &c.

Plowd. Com.
240. acc.
45 Ed. 3. 23.
Dyer 240. b.
St. Marl. c. 9.

And if Lands descend to many Coparceners, whereof one Suit ought to be done for the whole Land; now if the Land be holden of the King, then all the Coparceners ought to do the Suit as well after Partition as before: But if the Land be holden of another Lord, then that Coparcener or his Feoffee, who hath the Part of the eldest Sister, shall only do the Suit; and if the Lord will distrain the other Coparceners, then they shall have a Writ against him, directed to him or his Bailiffs, to discharge them of that Suit, and Distress taken, &c. and the Writ shall be such :

The King to C. or to the Bailiffs of C. greeting, &c. Whereas by the Common Council, &c. it is provided, that if any Inheritance, from whence one Suit only is owed, devolves to several Heirs, Coparceners of the same Inheritance, or otherwise by Sale or other Manner, only one Suit is to be done for that Inheritance, as before hath been accustomed to be done, and a certain Inheritance which was A.'s in N. (for which one Suit only was due to your Court of I. or to the Court aforesaid of your Lord of I.) is devolved to A. B. and C. Cobeirs and Parceners of the Inheritance aforesaid, as we have received Information: We command you (or ye) that you (or ye) do not distrain the aforesaid A. B. and C. severally to do divers Suits for their Portions of the said Inheritance at your Court of I. or at the Court aforesaid of your Lord of I. contrary to the Form of the Provision aforesaid, and the Distress, if any, &c.

And

D And if the Tenant in feoff divers Persons of Lands, for which one Suit ought to be done, if one of the Feoffees do the Suit, &c. if the other Feoffees are distrained to do Suit for that Land, they shall have such Writ, which Writ is in the Register, and that Writ is given by the Statute of *Marlebridge*, cap. 9. (a).

Perk. 130.
Post. 162. D.

And so if the Heirs or Feoffees shall do the Suit at the County, Hundred or Wapentake; if one do the Suit, all of them are discharged; and if they be distrained, they shall have that Writ. 24 Ed. 3. 34. Post. ibid.

And so if one Coparcener maketh a Feoffment of his Part, or a Man be Tenant by the Curtesy of one Part of the Land, (b) yet one Suit shall be only done by one Coparcener, by him who hath the eldest Part. And if they be joint Feoffees, then by one of them, as they can agree amongst themselves, &c. And if he sue such Writ, and he be distrained, then he shall have an Attachment against the Lord, or the Bailiffs to whom the first was directed, to answer that Contempt, in which Writ he shall recover his Damages, &c.

E But if there be two Coparceners of Land, for which one Suit ought to be done, and the eldest Sister will not do the Suit at the Lord's Court; then the Lord may distrain the other (c) Coparcener, as well as the eldest Coparcener, for that Suit, and if the Coparceners be distrained, then they shall have a Writ against the eldest Sister to compel her to do the Suit; and the Writ shall be such:

The King to the Sheriff, &c. If B. and C. shall make you secure, &c. then summon, &c. A. that she be, &c. to shew wherefore, whereas by the Common Council, &c. that if any Inheritance, &c. (as above, until) hath been accustomed to be done, and that she who hath the principal Part, &c. and a certain Inheritance, &c. (as above, until) is devolved to A. B. and C. Coheirs and Parceners of the Inheritance aforesaid, as we have received Information, and the aforesaid A. hath Part of that Inheritance; and the aforesaid B. and C. are ready to contribute to do the Suit for their Portions, she the said A. refuses to do that Suit for herself and the said B. and C. at the Court aforesaid, to the great Damage of them the said B. and C. and against the Form of the Provision aforesaid, as it is said: And have there the Summoners, &c.

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A (d) And if a Man have Lands in divers Places in the County, and hath several Leets, &c. or Hundreds, and he is constrained to come unto the Leet or

18 H. 6. 13.
Marl. c. 10.

or

(a) See Register 176. accordant. 11 Ed. 3. Avowry 10. by Stone and Thirn. contr. Parn. For Suit to the Hundred is not only in Respect of the Resiance, as Suit to a Leet, &c. is. Note Register 175. cum secundum legem & consuetud', &c. and ibid. 176. cum de communi concilio Regni, &c.

(b) See accordant 24 Ed. 3. 73. yet contra of Jointenants. Post. 162. D. See 2 Ed. 2. Avowry 179. If Lands descend to two Parceners, and the Elder does Homage, this discharges both; and yet if the Elder alien, the Lord may distrain on the Younger for the Homage.

(c) And shall make Avowry on her only, and

not on both after a Partition by Feoffment, &c. 24 Ed. 3. 73. See 2 Ed. 2. Avowry 184. and see the Case, 24 Ed. 3. 34, 73. where the Eldest aliens her Part to one, and the Younger her Part to another, and the Avowry made on the Alienee of the Elder only for Suit, &c. and so it may be on the Alienee of the Younger for other Suit; yet Suit made by one discharges both: And note per Cur. he cannot avow on both in Fee after such Severance.

(d) Note; A Thing presentable in the Leet, shall not be redressed in the Torn, without a special Prescription, because they are equal Jurisdctions, though at first the whole Jurisdiction

or the Sheriff's Torn, where he is not dwelling or conversant, but is dwelling within the Precinct of any other Leet or Hundred, &c. then he shall have a Writ unto the Sheriff for discharging him from coming to the Sheriff's Torn, or Hundred, or Leet, or other Place, than in the Leet or Precinct of the Hundred where he dwelleth; and the Writ is such:

The King to the Sheriff of Worcestershire, greeting: Whereas it is provided by the Common Council of our Realm, that they who have Tenements in divers Hundreds have no Necessity to come to the Sheriff's Torn, except in the Bailwick wherein they shall be dwelling; We command you, that you distrain not S. to come to your Torn in our Hundred of I. contrary to the Form of the Provision aforesaid, &c.

And look the Statute of *Marlebridge*, cap. 10. by which it appeareth, that the Sheriff ought for to hold his Torn as he hath used in the Time of *Richard the First*, and *John*, Kings of *England*.

And by the Writs it seemeth, That he shall hold his Torns in every Hundred, &c. And if the Sheriff distrain against that Statute any Man, then he may sue that Writ upon the Statute, &c. and if he do distrain him after; then he shall have Attachment against the Sheriff, &c. and the Writ is such:

The King to his Coroners in the County of Lincoln, greeting: If A. shall make you secure, &c. then put, &c. B. our Sheriff of the County aforesaid, that he be, &c. to shew wherefore, whereas by the Common Council, &c. (as above, until dwelling, he the said B. or he the said Sheriff hath distrained the aforesaid A. to come to the Torn of him the said Sheriff of our Hundred of I. contrary to the Form of the Provision aforesaid, and against the Form of our Mandate to him, before, thereupon directed, as it is said: And have, &c. And in the mean time cause to be delivered the Beasts of him the said A. taken on that Occasion. Witness, &c.

And if a Man have Lands within the Precinct of several Leets, or in one County, and he dwelleth within the Precinct of one of them, and he is distrained to come unto another Leet (a) where he dwelleth not, then he shall have such Writ unto the Sheriff, or Bailiffs of the Court, &c. that they do not distrain him to come to that Leet, within the Precinct whereof he dwelleth not; and the Writ is such:

The King to his Bailiffs of the Honour of C. in the County of Lincoln; or, To the Bailiff of A. of B. in the County of, &c. greeting: Whereas by the Common

was in the Torn; and is superior still, where the Lord of the Leet is peccant, 21 *Ed. 3.* 314. or where the Lord of the Leet does not remedy an Abuse, 20 *Ed. 3.* 85. 29 *Ed. 3.* 21. or in the Eye, or by Commission; *contra* 41 *Ed. 3.* *per Belk.* 10 *H. 4.* 4. an Enquiry in a *Quo Warranto*; *viz.* He who claimed a Leet within a Town, whether four Men and the Bailiff were resident to the Leet or the Torn, or the Hundred where the Town is. See 18 *H. 6.* 12, 13. The Inhabitants of a Leet shall be compelled to come to a Torn. But *per Cur.* one shall not be compelled to come to two Leets, although one be greater and the other less; for *per Cur.* the Sheriff's Torn is no Leet; for Assize of Bread and Beer shall be presented in a Leet, but not in a Torn; and those Things which are omitted in

a Leet, shall be presented in the Torn; and see there that the same Land may be within the Precincts of two Leets; and agree that *A.* may have a Leet at one Time of the Year, and *B.* at another Time of the Year, for both make but one Leet.

(a) Lands may be held by Suit to a Hundred by Prescription or special Grant, and he may be distrained, and also amerced for it, as it seems. And Note; if Land held by Suit at the Hundred, come to several Hands, several Suits shall be made, for it is not within the Statute, *per Parning*, which *Stone* denied: Also by *Parning*; if both Parcels return again to one Hand; yet two Suits are due, and he shall serve twice and be amerced twice. But *Shard* held the contrary. 11 *Ed. 3.* *Assize* 101.

Council, &c. that they who have Lands in divers Hundreds have no Necessity to come to the View of Frank-pledge, except in the Bailiwick where they shall be dwelling; We command you, that you distrain not A. to come to the View of Frank-pledge in your Court, or in the Court of your Lord of the Honour aforesaid in the County aforesaid, against the Form, &c. and the Distress, if any, &c.

And it appeareth that if the Party be distrained, after that he hath sued the Writ directed unto the Sheriff, or Bailiffs, that they not distrain him, that he shall have an Attachment against them: But it seems reasonable, that first he have an Attachment against the Sheriff, or against the Bailiffs, who distrained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the Precinct of another Leet, because the Statute of *Marlebridge* is a Prohibition in itself, and he who doth contrary to the Statute doth Wrong unto the Party, upon which he may have an Attachment, without suing forth any Writ.

Br. Leet 39.
Britton 41.

C *Note, That Men or Women who have entred into Religion, ought not to come unto the Sheriff's Torn, or unto the Leet of any other without great Cause; and if they be distrained for to come, they may have a Writ out of the Chancery to discharge them, which shall be such:*

The King to the Sheriff, &c. Whereas by the Common Council, &c. that Men who have entred into Religion have no Necessity to come to the Sheriff's Torn, &c. or thus, to the View of Frank-pledge, unless their Presence be required for some special Cause; We command you, that you distrain not the Abbot of I. to come to your Torn; or thus, to the View of Frank-pledge in your Hundred of F. against the Form of the Provision aforesaid, and the Distress, &c.

And the Abbot shall have such a Writ unto the Bailiffs of another Lord, that they do not distrain him to come to his Leet.

And by the Common Law, Parsons of Churches shall not be compelled or distrained to come to the King's Leets, or to the Leets of other Lords of the Lands annexed to their Churches, and if they be distrained so to do, they shall have such Writ:

The King to the Sheriff, &c. Whereas according to the Custom of our Realm Parsons of Churches, by reason of their Lands and Tenements annexed to their Churches, ought not to come to the View of Frank-pledge in our Court, or the Courts of any other Persons whomsoever; We command you, that you distrain not C. Parson of the Church of I. by reason of his Lands and Tenements annexed to the Church aforesaid, to come to the View of Frank-pledge in the Hundred of N. contrary to the Custom aforesaid, and the Distress, &c.

And Clerks who are not Parsons, nor have Benefices, shall not be distrained or compelled to come to Torns or Leets, but they shall have a Writ to discharge them, thus:

The King to the Sheriff, &c. Whereas Ecclesiastical Persons have no Necessity to come to the Torn of the Sheriff or to the View of Frank-pledge (unless their Presence be required for some special Cause) according to the Form of the Provision made by the Common Council of our Realm for Men of Religion in the like Case; Therefore we command you, that you distrain not S. Parson of the Church of N. or Chaplain, to come to your Torn or to the View of Frank-pledge of us in the Hundred of I. contrary to the Form of the Provision aforesaid, and the Distress, if any, &c.

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And

Br. Lect 34.

And Women are not compellable nor distrainable to come to the Sheriff's A Torn, nor to Leets; and if they be distrained, they may sue such a Writ as a Priest may sue, and thereupon an *Alias*, a *Pluries*, and Attachment, &c. And because that Women are not sworn in Leets as Men who are of the Age of twelve Years or more are; it is said, that when a Woman is outlawed, that she is *Wayve*, and not outlawed; for she was never sworn to the Law, &c. But a Man is said outlawed, because he was sworn to the Law; and now for his Contumacy he is put from the Law, and said outlawed, as it were *extra legem positus*; and a Woman is not so, for she was never sworn to the Law.

Wherefore a Man is said outlawed.

And by the Rule of the Register, two Women may sue that Writ unto the B Sheriffs or Bailiffs of the Leet, that they do not distrain them to come to the Torn or Leet, &c.

See before 14 good Cases for their Privileges.

And if the Sheriff will distrain the Tenants in Antient Demesne, to come C unto the Leet or Sheriff's Torn, they may have one Writ for them all directed unto the Sheriff, commanding him that he do not distrain them, &c. to do any Suit at the Leet or Torn; and that Writ shall be sued in all their Names if they will, as a *Monstraverunt* shall be sued: Or any of them may sue the Writ in his own Name, if he be distrained to do such Suit; and the Writ is such:

The King to the Sheriff, &c. The Men of the Manor of D. which is of the Ancient Demesne of the Crown of England, have shewed unto us, that whereas they ought not to come to the Torn of the Sheriff or to the View of Frank-pledge out of the Liberty of the said Manor, unless they themselves or their Ancestors, the Men and Tenants of the same Manor, have been accustomed to come in Times past; nevertheless you grievously distrain our Men aforesaid to come to the Torn in K. or to the View of Frank-pledge in our Hundred of K. contrary to the Custom hitherto used in the same Manor, and do very much unjustly disquiet them upon that Occasion, to the manifest Prejudice and Grievance of them the said Men and Tenants: And because we will not have any Injury done to the Men and Tenants aforesaid, we command you, if it be so, that then you wholly desist, for the Time to come, from bringing such Distresses upon them for the Cause aforesaid, and permit them so use and enjoy their Customs which they have hitherto reasonably used, without Interruption or Challenge, that repeated Complaint may not come to us. Witness, &c.

Mag. ch. p. 81.

And if the Sheriff will distrain a Man to do Suit to the Hundred or Wapentake D twice in the Year, to do Things appertaining to that Leet, then he shall have a Writ upon the Statute of *Magna Charta* directed to the Sheriff, which shall be thus:

The King to his Bailiffs of the Wapentake of R. greeting: Whereas in the Great Charter of the Liberties of England it is contained, That no Sheriff or his Bailiff shall keep his Torn in the Hundred but twice in the Year, and no where but in due Place and accustomed; that is to say, once after Easter, and again after the Feast of Saint Michael; and now from the Complaints of the Men and Tenants of the Abbot of C. we have received Information that you, contriving to aggrieve them the said Men and Tenants in this Behalf, do now again grievously distrain them to come to our certain Wapentake aforesaid, to present there these Things which belong to the View of Frank-pledge, to the great Damage and manifest Prejudice of those Men and Tenants, and contrary to the Tenor of the Great Charter aforesaid; We willing the same Charter to be inviolably observed in all Things, command you, that you in no wise distrain the said Men and Tenants to come before

us to the Wapentake aforesaid, to present those Things which belong to the Vicw of Frank-pledge, contrary to the Tenor of the Charter aforesaid, and the Distress, if any, &c.

And by that it appeareth, that he shall not distrain to come to the Hundred to present a Thing appertaining to the Leet but twice in the Year; but to do Suit at the Hundred, to do that which appertaineth (a) to the Hundred Court, he may distrain them several Times to do the Suit, and they shall have no Remedy, because Suit at the Hundred is from three Weeks to three Weeks.

Writ de Quarentina habenda.

THE Writ of *Quarentina habenda* lieth, where a Man dieth seised of any Messuage and Lands, &c. and immediately after the Death of the Husband the Heir, or he who ought to have the Lands after his Death, will put the Wife out of the Messuage, &c. Then the Wife shall have this Writ; for by the Statute of *Magna Charta*, cap. 7. the Wife shall remain in the capital Messuage after the Death of her Husband by forty Days, if it be not a Castle; and that Writ is *Vicontiel*, and shall be directed unto the Sheriff, and he shall hold Plea thereof; and the Writ is such:

The King to the Sheriff, &c. or to his Bailiffs of S. greeting: We have received Information by the Complaint of B. who was the Wife of D. that whereas it is contained in the Great Charter of the Liberties of England, That Widows shall remain in the capital Messuage of their Husbands for forty Days after the Death of their said Husbands, unless those Messuages be Castles, within which Time their Dowrs shall be assigned to them, and that in the mean time they shall have reasonable Estovers of the Goods thereof; I. of C. violently ejected her the said B. immediately after the Death of her aforesaid Husband from the capital Messuage which was his the said D.'s in H. (although it is not a Castle, and her Dowr was not assigned to her) and did not permit her to take her Estover of the Goods thereof, to the great Damage and Grievance of her the said B. and contrary to the Tenor of the Charter aforesaid: And because we will not that the aforesaid B. be injured in this Matter, we command you that, having called before you the Parties aforesaid, and having heard from them severally their Reasons thereupon, you cause to be done to her the said B. full and speedy Justice thereupon, according to the Tenor of the Charter aforesaid, lest for want of Justice repeated Complaint shall come to us. Witness, &c.

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 Quare, If an Infant may keep the Possession during the Time of Quarentine, by Force of the Statute of 8 H. 6. 4 & 5 Ma Dyer 161.

And upon that Writ the Sheriff shall award Procefs against the Party to come and answer the same, and shall not stay until the Courty Court be holden; for this Writ is a Commission unto him, and upon the same he shall and Drink; for the Statute doth not extend to it. But Fitz-Herbert in abridging the Case queries, if the party may kill any Things for her Provision, if there be not any Provision in the House.

Not to be taken where the Writ is not to be taken, if the party may kill any Things for her Provision, if there be not any Provision in the House.

(a) Note; A Hundred is no more than a Court-baron, and the Suitors there are Judges. 6 Ed. 4. 8. per Custom; and yet for Suit to a Hundred-Court, one cannot distrain except by Prescription, and in the Lands charged with the Suit. 5 Ed. 3. 52. 11 Ed. 3. *Avowry* 101. but he may be amerced by the Suitors for Default of Suit, and for such Amercements their Cattle may be distrained, &c. 2 H. 4. 24 11 H. 4. 89. See 11 Ed. 3. *Avowry* 101. per *Paving*.

Writ of Contribution.

immediately make Proceſs againſt the Party for to answer, &c. within two or three Days, according to his Diſcretion, and thereupon to proceed as Juſtices ſhall do upon a Commiſſion of Oyer and Terminer, &c.

Writ of Contribution.

THE Writ of Contribution lieth where there are Tenants in Common, or **B** who jointly hold a Mill *pro indiviſo*, and take the Profits equally, and the Mill falleth into Decay, and one of them will not repair the Mill; now the other ſhall have a Writ to compel him for to be contributory to the Reparations; and the Writ is ſuch:

The King to the Sheriff, &c. If A. ſhall make you ſecure, &c. then ſummon, &c. B. and C. that they be, &c. at W. &c. to ſhew wherefore, whereas they the ſaid A. B. and C. jointly hold a certain Mill undivided in N. and the Iſſues thence coming by equal Portion partake, and are bound to the Reparation and Support of the ſame Mill, and the ſaid B. and C. (although they receive the Proportion of thoſe Iſſues happening to them) deny to contribute to the Reparation and Support of the ſaid Mill, to the great Damage of the ſaid A. as he ſaith: And have there the Summoners and this Writ, &c.

And if there be three or four Coparceners of Lands, and the eldeſt ſiſter do the Suit to the Lord of whom the Lands are holden for all the Coparceners, and the others will not allow her for her Charges and Loſſes according to the Rate for the ſame Suit; that Coparcener who did the Suit may have this Writ of Contribution; and the Writ is ſuch:

The King to the Sheriff, &c. If B. ſhall make you ſecure, &c. then ſummon A. and I. his Wife, and R. and F. his Wife, that they be before our Juſtices, &c. to ſhew wherefore, whereas by the Common Council, &c. that if any Inheritance, &c. (as before, until) and ſhe who hath the eldeſt Part of that Inheritance may do the Suit for herſelf and her Parceners of the ſame Inheritance, and that they the ſaid Parceners ſhall contribute to the doing that Suit, and a certain Inheritance which was C.'s in R. (for which one Suit only is due at the Hundred of I. of N.) is devolved to her the ſaid B. and the aforeſaid A. and I. R. and F. Parceners of the Inheritance aforeſaid, as we have received Information, and the aforeſaid B. who hath the eldeſt Part of that Inheritance, doth the Suit at the Hundred aforeſaid, or at the Court aforeſaid, for herſelf, and the aforeſaid A. and I. R. and F. her Parceners, they the ſame A. I. R. and F. deny to contribute towards doing that Suit, to the great Damage of her the ſaid B. and againſt the Form of the Proviſion aforeſaid, as ſhe ſaith: And have, &c.

And if there be many Coparceners, and the eldeſt do the Suit, and the other Coparceners agree with the eldeſt for a Rate; now the Writ of Contribution ſhall be brought againſt the others, who would not contribute, &c. And if many be infeoffed of Land, for which one Suit ought to be done, &c. (a). Now if they agree among themſelves, that one of them ſhall do the Suit, and that the others ſhall contribute unto him, if he do the Suit, and afterwards the others will not allow him for that Suit according to their Rate,

(a) And ſo it alſo ſeems of ſeveral Feoffees, for the Statute of *Marlebridge* does not limit in ſuch a Caſe who ſhall do the Suit.

then he shall have the Writ of Contribution against them, and the Writ shall mention the Agreement, &c. and if they cannot (a) agree, then the Lord shall distrain them all for all their Suits, if the Suit be not done; but if one Feoffee of his own Will do the Suit for them all, without any Agreement for the same made between them, the Lord cannot then distrain the others for the Suit; for as to the Lord, it is not material whether there be any Agreement between them or not; but between the Feoffees, he that did the Suit shall not have the Writ of Contribution against his Companions, without Agreement thereof made betwixt them. But if one Jointenant do make a Feoffment in Fee of his Part, his Feoffee shall do a several Suit by himself. But the other Jointenants shall do but one Suit by the Statute of *Marlebridge, cap. 9.* But every Tenant in Common shall do several Services and several Suits. And the Process in this Writ is Summons, Attachment and Distress.

Ant. 159.

Writ de contra Formam Feoffamenti.

St. Marl. c. 9.

E THE Writ de contra Formam Feoffamenti lieth, where a Man doth infeof another before the Statute of *Quia emptores terrarum*, (b) to hold of him by Homage, Fealty, and Rent by Deed, and afterwards he will distrain for Suit or other Services to be done unto him; he who was infeofed, or his Heir, shall have this Writ of *contra Formam Feoffamenti, &c.*

5 Ed. 4. 85. Br. cont. Formam Feoffamenti.

F And this Writ may be directed unto the Lord himself, or unto his Bailiffs, commanding them that they do not distrain him against the Form of his Grant; and this Writ is a Prohibition in itself. And if the Lord and Bailiffs do contrary to the Writs sent to them, the Tenant thereupon shall have an Attachment, and a Distress; and the Form of the Writ is such:

[163.]

B *The King to I. or to the Bailiffs of I. greeting. Whereas by the Common Council of the Realm, &c. it is provided that none by reason of their Tenements be distrained to do Suit at the Court of their Lords, unless they are specially bound to that Suit by the Form of their Feoffment, or they or their Ancestors holding those Tenements, have been accustomed to do it before the first Voyage of Lord King Henry into Brittany: We command thee or you, that you or ye, do not distrain A. to do Suit at your Court of I. or at the Court aforesaid, of your Lord of N. against the Form of the Provision aforesaid: And the Distress, if any, &c.*

(a) See *Kelw.* 131. & *ibid.* 30. &c. And yet the other joint Feoffees shall make but one Suit. See 45 *Ed.* 3. 23. *per Skipw.* If Land be charged to a Suit real, as to a Hundred or Wapentake, or other real Service, if the Land out of which the Suit issues comes to several Hands, so that each of them knows his Severalty, each of them shall make several Suits. See 11 *Ed.* 3. *Avowry* 101. If Land be charged with Suit to a Hundred, which is afterwards severed into Parcels, several Suits shall be made; yet see before 159. that the Statute of *Marlebridge* extends to Suit at the Hundred, and by *Shard* and *Stone*, when the Lands come afterwards into one Hand,

there shall be but one Suit; but by *Parning* there shall be two Suits, and two Amercements. See the *Register* 177. *Rex Ballivis, &c. Cum de communi concilio, &c. provisum sit quod si plures hereditates ad unum heredem descenderint, vel aliquis sibi a diversis feoffatoribus tenementa acquisiverit, pro illis hereditatibus & tenementis diversis ad unam curiam exigi non debeant sed & diversae, vobis praecipimus quod non Distringatis, &c.*

(b) But if the Feoffment be made before Time of Memory, one shall not have a *Contra formam Feoffamenti*, but a *Ne injuste vexes*, for such a Feoffment is not pleadable. 12 *H.* 4. 24.

17 Ed. 3. 8. And no Person shall have this Writ of *contra Formam Feoffamenti*, but he
 4 Co. 121. b. who was (a) infeoffed, or his Heirs who are Privies to the Deed; but if the
 14 H. 4. 5. Feoffee, to whom the Lands were (b) given to hold of the Feoffor and his
 Heirs by the Deed, make a Feoffment over to hold of the chief Lord, &c.
 the Feoffee shall not have this Writ *de contra Formam Feoffamenti*, because
 he is not Party or Privy to the Deed, but he shall (c) rebut the Lord by that
 4 Ed. 2. Deed, to claim other Services than are mentioned in the Deed. And that
 Avowry 122. Writ is a Prohibition unto the Lord and his Bailiffs; and if he distrain after
 202. the Writ delivered to him, the Tenant shall have an Attachment against him,
 22 H. 6. 50. and thereupon he shall recover his Damages if it be found for him, &c. and
 56 H. 6. 7. the Process is Prohibition, Attachment and Distress.
 22 Ed. 3. 28.

And the Rule in the Register is, *If any for Suits undue against the Form of any Statute, to the Court of any to be done, be distrained, he may have a Prohibition against the Distrainer, and after an Attachment if need be: And afterwards Attachment, nor can he be attached, unless a Prohibition be first directed unto him.*

10 Ed. 3. 25. And the Opinion of *Parning* is, P. 10 Ed. 3. That if a Man give Land in
 31 Ed. 1. Frankmarriage, or in Frankalmoign, that the Donor shall not have a Writ of
 Avowry 249. *contra formam Feoffamenti*; nor his Heirs, because there are not any Services
 expressed in the Deed, for which Reason he is out of the Statute of *Marle-
 bridge, cap. 9.* but they may rebut the Lord by such Deed.

16 H. 3. And if the Lord confirm the Estate of the Tenant to hold by lesser Services, G
 Avowry 243. &c. The Tenant shall have a Writ of *contra Formam Feoffamenti*; if he be
 11 Ed. 3. distrained for more Services than there are specified in the Deed of Confirmation.
 ibid. 100. M. 16 Ed. 3. Avowry 243. 30 Ed. 3. 13. per *Seton, &c.*

28 Ed. 3. 92. And in a *contra Formam Feoffamenti*, the Person did count upon the Deed, H
 Avowry 241. and the Distrainer demanded Oyer thereof, and could not have it. M. 3 Ed. 2.
Action sur le Case 5.

10 Ed. 3. 25. And the *contra Formam Feoffamenti* lieth only against the Feoffor and his I
 7 Ed. 3. 8. Heirs.

(a) But the contrary has been adjudged, where the Feoffee of him to whom the Deed was made, brought the Writ against the Grantee of him who made the Deed, and he was adjudged to answer; and by *Wilby* it had been often so adjudged. 4 Ed. 3. 25. See 4 H. 4. 5. per *Thorn*. a Feoffee, &c. See 10 Ed. 3. 25. acc. per *Trem*'.

(b) See 4 Ed. 2. Avowry 202. per *Cur. cont.* if he had paid him himself. 4 Ed. 2. ib. 201.

(c) A Stranger may rebut the Feoffor or his Heirs by the Deed of Feoffment notwithstanding the Seisin. 5 Ed. 3. 19. 8 Ed. 3. 67. 4 Ed. 2. Avowry 202. See *contra* 4 Ed. 2. Avowry

401. *Rebutter* 22 Ed. 3. 18. altho' the Feoffment was made to a Stranger to the Tenancy, he shall not rebut a Stranger in the Seignory, after Seisin by Deed of Confirmation before Time of Memory, 11 Ed. 3. Avowry 100. nor by Deed of Feoffment, 10 Ed. 3. 25. he shall not forejudge the Tenant. 7 Ed. 3. 8. See 44 Ed. 3. 39. *contra* per *Kirt*. The Party rebuts the Lord by Confirmation of his Grantor, to hold by less Services. 28 Ed. 3. 92, 93. per *Cur*. See 10 Aff. 29. 28 Aff. 33. 12 R. 2. Avowry 266. 34 Ed. 3. *ibid.* 258. 19 Ed. 3. *ibid.* 122.

Writ de Coronatore eligendo vel exonerando.

K **T**HE Writ de (a) Coronatore eligendo lieth, where a Man who is Coroner of any County dieth, or be discharged of his Office, then that Writ shall be awarded unto the Sheriff, that he in full County, by the Freeholders of the County, chuse another in his Place, and to certify the Election, and his Name who is chosen, in the Chancery. 4 Ed. 4. 44.

L And in every County commonly there are four Coroners, and in some Counties six Coroners, and in some Counties less, as the Usage is; and if any of them dieth, or is discharged, then shall issue such Writ :

M *The King to the Sheriff, &c. Because L. one of our Coroners in your County, is dead, as we have received Information; We command you, if it be so, that then in your full County, with the Assent of the same County, you cause to be chosen in the Place of him the said L. one other Coroner, according to the Form of the Statute thereof set forth and provided, who having taken the Oath (as the Custom is) from thenceforth shall do and keep those Things which belong to the Office of Coroner in the County aforesaid, and cause to be chosen such a Person, who best may know and is able to attend that Office, and make known to us his Name. Witness, &c.*

And now it appeareth by the Writ, that upon Election made the Sheriff shall give him his Oath duly to execute his Office. *Vide Stat. West. 1. cap. 10.*

N And the Coroner shall be discharged of his Office by the King's Writ sent unto him, and thereupon shall issue another Writ directed unto the Sheriff to chuse a new Coroner, and that Writ shall recite the (b) Cause of the Discharge of the other Coroner; and the Writ shall be such : L. 5 Ed. 4. acc. By our Judgm. Coroner shall not be discharged by Demise of the King because he is made by Writ; contr. of others, who are by Commission. 4 Ed. 4. 44.

The King to the Sheriff, &c. Because R. one of our Coroners of your County, is so much occupied in doing our divers Busineses in your County, that he hath not Leisure to exercise those Things which belong to the Office of a Coroner in the same County (as we certainly understand) we have removed him from that Office; We commend you that, &c. one other Coroner, &c. (as above). Or thus, Because we have received Information from worthy Testimony, that W. T. one of our Coroners of your County, is so infirm and broken with old Age, that he is not able to exercise those Things, &c. we have commanded him the said W. to be removed from that Office; And therefore we command you, &c. Or thus, Because W. one of our Coroners, &c. is unfit to execute that Office, as from the Relation of, &c. Or thus, Because we have received Information, that W. lately chosen Coroner of the County aforesaid, hath not Lands or Tenements in the same County, by which he can keep up his State for the exercising the Office (c) aforesaid: We command

(a) Note; A Coroner made Sheriff is discharged from his Office of Coroner. *C. L. 79.*

(b) But this Cause is not traversable. *5 Co. 58.*

(c) Note; If there are four Coroners in one County, and a Writ is directed to them, if one dies, yet the other three may execute the Writ, because there still remains the greater Number; but if before the Execution of the Writ, three shall die, so that there is only one remaining, he

cannot execute the Writ until others are elected. *14 H. 4. 39.* If there are four Coroners, and a Writ is directed to them, three Coroners cannot make a Return of the Execution of the Writ. *31 Aff. 20.* But if one of them makes Execution of it, and the Return is by all of them, there it is good, as if one of them only sits at the County-Court on the Exigent. *14 H. 4. 34. per Hawk. in a Capias. 39 H. 6. 41.*

[164.] you, &c. Or thus, *Because A. one of our Coroners, &c. is struck with the Palsy, &c. Or, Because he dwells in the extreme Parts of the whole County, by which he cannot conveniently exercise those Things which belong to the Office, &c. Or, Because he is chosen into the Office of Sheriff of the County aforesaid, or is chosen Verderer of our Forest of S. by which, &c. Or, Because he hath not one hundred Shillings of Land, as it is said, or because he is not a Knight, &c.*

But it seemeth, that at this Day this last Clause is not Cause for to remove the Coroner: For if he have sufficient Lands within the County, it sufficeth, although he be not a Knight, notwithstanding the Statute which requireth that he be a Knight. For those Words are put into the Statute, to the Intent that he should have sufficient within the County, and for no other Cause. And it A seemeth, the King by his Writ may command the Sheriff to chuse two or three Coroners, if there want so many in the County.

And if the Sheriff chuse one to be Bailiff of the Hundred or Wapentake; or if the Lord of a Liberty chuse one to be Bailiff of the Liberty, who hath not sufficient Land within the County, according to the Statute of *West. 2.* (but see the Statute of *2 Ed. 3. cap. 4.* thereof) then a Writ shall be sent to the Sheriff for to discharge such Bailiff, and to chuse another in his Place, and upon that a Man may have an *Alias* and *Pluries*, and Attachment against the Sheriff, if that he do not according to the Writ; and the Writ is such:

The King to the Sheriff, &c. Whereas in the Statute lately set forth at Westminster it is contained, That no Man shall be Sheriff or Bailiff of a Liberty, Wapentake, Hundred or Tithing, unless he hath Lands and Tenements sufficient in the same County, from whence he may be able to answer to us or our People in this Behalf, if any one shall complain against him; and now we understand, that you have made W. of T. who hath not Lands or Tenements in the same County, Bailiff of our Wapentake of B. in Contempt of us, and to the great Damage and Grievance of our People in this Behalf, and against the Form of the Statute aforesaid; And therefore we command you, if it be so, that then you cause him the said W. to be removed from the Office of Bailiff aforesaid without Delay, and cause another competent Person to be constituted and ordained in his Place, according to the Form of the Statute aforesaid. Witness, &c.

Writ de Electione Viridariorum Forestæ.

C THE Writ of Election of the Verderors of the Forest lieth, where any of the Verderors are dead, or removed from their Offices, &c. Then the King shall send a Writ to choose another in his Place, and it shall be directed to the Sheriff, and is such:

The King to the Sheriff, &c. Because A. lately one of our Verderors of our Forest of D. is dead, as we have received Information; Therefore we command you, if so it is, that then in your full County, with the Assent of the same County, you cause to be chosen in the Place of him the said A. one other Verderor, who having taken the Oath (as the Custom is) from thenceforth may do and keep those Things which belong to the Office of Verderor in the Forest aforesaid, &c.

And by that it appeareth, that the Verderor shall be chosen in the same Manner as the Coroner of the County shall be chosen by the Freeholders of the County.

D And if a Coroner or Verderor be discharged of his Office by false Suggestion by the King's Writ directed to the Sheriff, then the Party may come into the Chancery, and require a Commission to enquire of the said false Suggestion, and to return the Inquiry before the King into the Chancery; or the Justices of the Forest may certify the King of the false Suggestion under their Seals; and if it be found to be false, then the King may make a *Supersedeas* to the Sheriff, that he do not remove the Verderor, if, &c. And if he be removed that he suffer him to exercise his Office as he did before; and the Writ is such:

The King to the Sheriff, &c. Although it hath been suggested unto us in our Chancery, that A. one of the Verderors in our Forest of S. had not Lands or Tenements within the Limits of the Forest aforesaid, nor dwelt within the said Forest, and we commanded you, if it was so, that then in your full County, with the Assent of the same County, you should cause to be chosen in the Place of the aforesaid A. one other Verderor, who having taken the Oath (as the Custom is) should do and keep those Things which belong to the Office of Verderor in the Forest aforesaid: Nevertheless, because it is certified before us in our Chancery by our beloved and faithful I. of S. our Justice of our Forest beyond Trent, that he the said A. hath sufficient Lands and Tenements within the Forest aforesaid, and is fit and sufficient for the Office aforesaid; We being unwilling that he the said A. be removed from that Office by occasion of this false Suggestion, command you, that you wholly supersede the Execution of our said Writ to you directed by reason of the said false Suggestion, and permit him the said A. to exercise that Office as hath hitherto been accustomed to be done. Witness, &c.

Writ for the Election of the Clerk to take Obligation upon Statutes-merchant.

[165.] **T**HE Writ for the Election of the Clerk assigned to take and make Obligation thereof by Statute-merchant, lieth where the Clerk who is assigned to take such Obligation, dwelleth in another Place, or is busied in other Affairs, that he cannot intend or follow the Office, or that he hath not sufficient Lands, &c. to answer for his Misdoing; then upon a Surmise made in the Chancery, such Writ shall be made directed unto the Mayor or Bailiff to discharge him, and to chuse another; and the Writ is such, viz.

The King to the Bailiffs and to the honest Men of the Town of H. greeting: Because we have received Information from the Relation of many Persons, that R. who now hath the Custody of the greater Piece of the Seal appointed for taking Obligations, according to the Form of the Statute of Acton Burnell in the Town aforesaid, dwelleth not in the Town aforesaid, by which he cannot attend to do those Things which belong to his Office in this Behalf, to the great Expence and Grievance of the Merchants and other Persons resorting to the said Town: We command you, if it is so, that then you cause to be chosen in the Place of him the said R. one other Man of the Town aforesaid who better knows and can attend to do those Things belonging to that Custody, and certify us of the Name of him whom you shall so chuse, distinctly and openly, under your common Seal, without Delay, sending to us this Writ. Witnesses, &c.

And it appeareth by the Statute *de Mercatoribus*, that the King shall make the Clerk; and by it appeareth, that the Mayor or Bailiffs shall chuse the Clerk, &c. but it seemeth that Writ is granted *ex gratia Regis*. For he might send a Writ of Discharge unto the Clerk, and make a new Clerk (as it seemeth) at his Pleasure.

(a) *Writ de non ponendis in Assis & Juratis.*

29 Ed. 3. 15. **T**HE Writ *de non ponendis in Assis & Juratis* is grounded upon the Statute A of *West. 2. cap. 38.* and upon the Statute of *Articuli super Chartas, cap. 9.* which Statutes declare what Persons the Sheriff ought for to impanel, and what Number he ought to impanel in Juries and Inquests, and the Writs declare the Effects of the Statutes; and the Writ shall be such: One was chosen by Knights in a Writ of Right upon the Grand Assise, and after he shewed a Charter of Exception, *De non ponendis, &c.* and it was not allowed, the same Suit. Attaint.

(c) *Note*; The Sheriff or other Officer who discharges any Person by Colour of any Writ, &c. to serve as a Juror, who is under seventy Years of Age, forfeits twenty Pounds by Stat. 7 and 8 *H. 3.* *Vide post. D.*

The King to the Sheriff, &c. Whereas amongst other Articles which Lord E. formerly King of England, &c. ordained for Amendment of the State of his People, it is granted, that no Sheriff or Bailiff shall put in Inquests nor Juries more Men, nor other Persons, nor in other Manner, than is ordained by the Statute, and that they shall put in Inquests and Juries such Men as be nearest Neighbours, most sufficient and least suspicious, and he who shall do otherwise, and shall be attainted thereupon, shall pay the Plaintiff his Damages double, and be in our great Mercy; We command you, that in the Jury of twenty-four Knights, which H. T. of K. hath arraigned before, &c. by our Writ against W. F. to convict the Jurors of the Assise of Novel Disseisin, which between him the said W. and the said H. T. and others contained in our original Writ, was summoned and taken at E. by our Writ before us, of Tenements in C. you cause to be put Men nearest to that Neighbourhood, most sufficient and least suspicious, by whom the Truth of the Matter may be better known and inquired, according to the Form of the Articles aforesaid, and this in no wise omit.

- B** And by this Writ it appeareth: When a Man sueth an Assise of Attaint, or such Actions in which are Jurors at the first Day, &c. that he may also sue this Writ directed to the Sheriff, that he return the Panel according to the
- C** Statute; and if the Sheriff do not accordingly, then it seemeth the Party shall have an Attachment against the Sheriff. And this Writ may be sued as well by the Defendant as by the Plaintiff or Demandant, and also although that the Party do not sue forth the Writ, yet if the Sheriff or Bailiff of the Liberty return a Panel against the Form of the Statute, the Party Defendant or Plaintiff may have an Action upon the Statute against the Sheriff, &c. because the Statute is a Prohibition in itself; and the Form of the Writ of Attachment upon the same is such:

The King to his Coroners in the County of Lincoln, &c. Put by Gages, &c. B. our Sheriff of the County aforesaid, that he be before, &c. to shew wherefore, whereas amongst other Articles, &c. (as above, till) in our great Mercy; And lately (at the Prosecution of H. affirming that a certain Inquest ought to have been taken before our Justices aforesaid in a Plea which was before the same Justices by our Writ between R. Demandant, and T. Tenant of the Manor of S. with the Appurtenances) we commanded the said Sheriff, that he should put in that Inquest Men nearest Neighbours, most sufficient and least suspicious, according to the Form of the Statute and Articles aforesaid, be the said Sheriff hath put in the same Inquest Men most remote, least sufficient and most suspicious, contrary to the Form of the same Statute and Articles, and against the Tenor of our said Command, as it is said: And have, &c.

- D** And by the Statute of *Westm. 2.* aforesaid, the Sheriff ought not (a) to impanel Men who are sick or decrepit, nor Men who at the Time of the Sum-
West. 2. Broc-
Jurors 49.
mons were not dwelling within the County, nor Men above the Age of three-score and ten Years, &c. and if he do, then he, or those who are impanelled by the Sheriff, may sue this Writ unto the Sheriff, commanding him that he do not impanel them, &c.

(a) See the Stat. 7, 8 *W. 3.* cited *supra*, A.

48 Ed. 3. 30.
27 H. 8. 22.

And Barons who are Lords shall not be impanelled upon Inquests nor Assises, &c. if their Presence be not necessary; but they shall have a Writ unto the Sheriff to discharge them thus:

[166.] *The King to the Sheriff, &c. Because the Barons of our Realm have not been accustomed to be put in any Assises, Juries or Recognizances, as they say, unless their Oath be so necessary, that the Truth cannot be inquired without them; We command you that you do not put, or cause to be put, our beloved and faithful A. in any Assises, Juries or Recognizances, against his Will, without our special Command, unless his Presence be for some Cause specially required. Witness, &c.*

But if the Sheriff hath returned any Lord in Juries or Assises, &c. then he ought to bring a Writ unto the Justices, reciting that he is a Peer of the Realm, commanding them for to discharge him, otherwise he shall be sworn, and if he do not appear, he shall lose Issues, &c.

There are also other Writs for those who are Sick, or past seventy Years of Age, or those who are not dwelling in the County, and the Writ is such:

The King to the Sheriff, &c. Whereas by the Common Council, &c. it is provided that Men continually infirm, or thus: That Men not dwelling in the Country at the Time of the Summons of the Sheriff. Or thus: That Men exceeding the Age of seventy Years, shall not be put in Assises, Juries, &c. We command you, that if A. be continually infirm; or thus, exceeding the Age of seventy Years; or, at the Time of your Summons shall not be dwelling in your Bailiwick, or your County, then that you put not, or cause to be put, him the said A. in Assises, Juries or Recognizances, against the Form of the Provision aforesaid. Witness, &c.

Ant. 16.
Post. 266.

Clerks who have Lands or Tenements by Descent or Purchase, may be put and sworn in Assises and Inquests as well as other Lay Persons, as appeareth by the Register; and it seemeth the Law is such. But if such Clerk be in the King's Service, he shall have a special Writ for to discharge him; and the Writ is such:

The King to the Sheriff, &c. Because Master R. Clerk, at this Time continually abideth in our Service, or in the Service of the venerable Father I. Bishop of Ely; We command you, that him the said R. by reason of the Lands and Tenements which he holds in the County aforesaid, you put not or cause to be put in any Assises, Juries or Recognizances, so long as he abides in the Service of us, or of the same Bishop, as aforesaid. Witness, &c.

And by the Writ it appeareth, that a Clerk shall be put and returned in Panels and Juries, if he be not in the Service of the King or other Person for whom the King will write to the Sheriff, that he do not impanel him, &c. but if the Sheriff do impanel and return such Clerks, they ought for to appear, otherwise they shall lose Issues, and they have no Remedy if they have not such Writ as before.

And if the Sheriff do impanel, or return them in Juries after such Writ directed unto him, then, as it seemeth, they shall have Attachment against the Sheriff, &c.

St. 21 Ed. 3.
Jurors, p. 3.

But if the Sheriff do return Men who are dwelling in other Counties, or past seventy Years of Age, or those who are Sick, then they shall have an Action upon the Statute against the Sheriff, although they have not sued forth such Writ, directed to the Sheriff, because the Statute is a Prohibition to him,

him, that he return not such Persons, and, it seemeth, the Sheriff is bounden to take Notice of the Statute at his Peril; *tamen quere.*

And if the Sheriff do return any Panel-Men who are not sufficient to pass in the Action of Lands and Tenements, &c. then the Juror may have an Action upon the Statute; which is such:

The King to the Sheriff, &c. Whereas for the common Utility of the People of our Realm it is appointed by the Common Council of the same Realm, that no Person be put in any Assises, Juries or Recognizances, unless he hath Lands and Tenements to the Value of forty Shillings by the Year at least, yet so that before Justices Itinerant at Common Pleas in their Eyres, and also in Assises, Juries or Recognizances which happen to be made in Cities, Boroughs and other Towns, may be done as hath heretofore been accustomed to be done; We command you, that if A. hath not Lands or Tenements to the Value of so much by the Year, then put not or cause to be put him the said A. in Assises, Juries or Recognizances, against the Form of the Statute, &c.

E And if the Sheriff do the contrary, &c. he shall have an Attachment against the Sheriff. And by the Statute the Sheriff ought not to impanel any Juries to try any Matter which shall be tried out of the County, if they may not expend five Pounds by the Year, &c. And if he do, the Party shall have an Action upon the Statute of 21 Ed. 1. *de ponendis in Assisis & Juratis.* Star. 2 Ed. 1. Jurors 3.

F And if the Sheriff return any Panel-Men who dwell within Ancient Demesne for their Lands within Ancient Demesne, then they may have a Writ against the Sheriff, that he do not return them; and the Writ is such: Ant. 14. F.

The King to the Sheriff, &c. Whereas according to the Law and Custom of our Realm hitherto obtained and approved, the Men and Tenants of the Manors which are of the Ancient Demesne of the Crown of England, for the Lands and Tenements which they hold of the same Demesne, ought not to be put in any Assises, Juries or Recognizances, except only in those which ought to be made in the Court of such Manor; We command you, that you put not or cause to be put our Men and Tenants of our Manor of A. which is of the Ancient Demesne of the Crown of England, (as it is said) for the Lands and Tenements which they hold of the same Manor, in any Assises, Juries or Recognizances out of the Court of the Manor aforesaid, contrary to the Law and Custom aforesaid, except they hold Lands and Tenements of another Tenure, by which, according to the Form of the Statute provided by the Common Council of the Realm, they ought to be put in Assises, Juries or Recognizances, and the Distress, if you shall have made any upon those our said Men and Tenants by the Occasion aforesaid, you shall release to them without Delay. Witness, &c.

And by that Writ appeareth, that all the Tenants may sue the Writ, as they may sue forth a *Monstraverunt*; and if the Sheriff do contrary to the Writ, they shall have an Attachment against him, and any of the Tenants may sue the Writ in his own Name if he will; and then the Writ shall be such: [167. 4

The King to the Sheriff, &c. (as above, till) We command you, that A. Tenant, or thus, A. and B. Tenants of the Manor of M. which is of the Ancient Demesne of, &c. (as above).

And although that the Manor be not in the King's Hands; yet the Tenants shall have the Writ against the Sheriff, if he impanel them, &c. And also

they shall have the same Writ against the Bailiffs of the Liberty who have Return of Writ, if they return any of the Tenants who hold of a Manor which is Ancient Demefne, for Juries, Assises or Inquests, &c.

And also the Sheriff ought not to return Coroners in Assises, Juries or Inquests, nor Verderors, nor Foresters, nor other Officers of the Forest, and they may have a Writ for to discharge them; and the Writ shall be such:

The King to the Sheriff, &c. Because A. one of our Coroners of your County, cannot attend to exercise those Things which belong to the Office of Coroner in the same County, if he be put in any Assises, Juries or Recognizances out of the same County; We command you, if it be so, then that you put not or cause to be put A. in any Assises, Juries or Recognizances out of your County, whereby he may be less able to attend the Office abovesaid.

And by that it appeareth, that the Sheriff may return the Coroner to inquire of Affairs in the County before Commissioners or Justices of the Peace. A But upon Actions sued in the Common Pleas or King's Bench, they shall not be returned in any Panel. And for Verderors or Foresters, or other Officers, the Writ is such:

The King to the Sheriff, &c. Whereas Lord Edward formerly King of England, our Progenitor, by his Letters Patent granted for himself and his Heirs, that Foresters, Verderors, or other Ministers of his Forest, should not be put in any Assises, Juries or Recognizances to be taken out of the Forest; We command you, that if A. be our Verderor of our Forest of S. or Forester, &c. then put not or cause to be put him the said A. in any Assises, Juries or Recognizances (a) to be taken out of that Forest, according to the Form of the Provision aforesaid, and the Distress, if any, &c. Or thus: Because one of our Verderors of our Forest of S. in your County, cannot attend to exercise those Things which belong to the Office of a Verderor in the same Forest, if he be put in Assises, &c. out of the Forest aforesaid; We command you, &c. (as above).

Writ upon the Statute of 23 Ed. 3.

Stat. 22 Ed. 3.
Labourers,
p. 2.

IF a Man do retain my Servant being in my Service, for which the Servant B departeth from me, &c. and goeth to serve the other, I shall have an Action against him who retained him, and against the Servant, upon the Statute of 23 Ed. 3. And the Writ shall be Attachment against them, because the Statute is a Prohibition to them, that they shall not do so; and the Form of the Writ is such:

The King to the Sheriff, &c. If A. shall make you secure, &c. then attach I. of B. so that you may have him before our Justices, &c. as well to answer us as the aforesaid A. wherefore, whereas it is ordained by us and our Council, for the common Utility of our Realm, that if any Mower, Reaper, or other Labourer or Servant, of whatever State and Condition he shall be, retained in the Service of any Man, shall depart from the said Service before the End of the Term agreed upon,

(a) See Rot. Claus. 9 H. 3. m. 5. *Viridarii & Forestarii Domini Regis de Feodo non ponantur in Assise.*

without reasonable Cause or Licence, he shall undergo the Pain of Imprisonment, and no Person under the same Punishment shall presume to receive or retain such Servant in his Service, nor shall any Person pay or promise to pay to any Servant greater Wages, Liveries, Rewards or Salaries, than were used to be given in the twentieth Year of the Reign of King Edward the Third, our Progenitor, or was common one Year with another in the five or six Years next preceding, under the Penalty of double of that which shall be so paid or promised, to be applied to his Use who shall perceive himself aggrieved by this, the aforesaid I. retained in his Service at B. R. of C. lately serving him the said A. who, from the same Service before the Term agreed between them (Promise being made to him by him the said I. of a Salary to be received more than usual) without a reasonable Cause and the Licence of the aforesaid A. departed into the Service of him the said I. although he hath been requested to restore the aforesaid R. to him the said A. he hath admitted and retained him, in Contempt of us, and to the great Damage of him the said A. and contrary to the Form of the Ordinance aforesaid; also attach the aforesaid R. so that you may then have him there as well to answer us as the said A. wherefore he departed from the Service of the said A. without a reasonable Cause and his Licence as aforesaid, in Contempt of us, and to the great Damage of him the said A. and contrary to the Ordinance aforesaid: And have there this Writ. Witness, &c.

And he may sue the Writ against the Master only, or against the Servant only, and it appears when the Writ is against the Master and the Servant, then there are several Attachments made in the Writ 9 H. 6. 7.

C (a) And if a Man be required to serve, and hath not Lands nor Tenements Stat. 23 Ed. 3. to live upon, nor other Art or Trade, and he refuseth to serve, then he who C. 1. requireth him to serve shall have this Writ:

The King to the Sheriff, &c. If W. &c. then attach R. so that you may have him before our Justices, &c. as well to answer us as the aforesaid W. wherefore, whereas it is ordained by us and our Council, for the common, &c. that every Man and Woman of our said Realm, of whatsoever Condition he shall be, free or servile, being able in Body and within the Age of sixty Years, not living by Merchandize, nor exercising a certain Craft, nor having of his own whereof he can live, nor Land of his own, about the Tilling whereof he can occupy himself, and not serving another, if he shall be required to serve in a fit Service, his State being considered, he shall be bound to serve him who shall first come to require it, and shall receive only the Wages, Liveries, Rewards or Salaries, which in the Places he ought to serve were accustomed to be paid in the twentieth Year of the Reign of King Edward the Third, or common in the five or six Years one with another preceding; and if such Man or Woman so required to serve will not do this, he shall be immediately taken and sent to the next Gaol, and shall abide there under close Custody until he shall find Security to serve in Form aforesaid, he the said R. being of such Condition, hath absolutely refused to serve the aforesaid W. although he hath been often requested to serve him the said W. for a Salary competent to his State and accustomed in the said preceding Years one with another, in Contempt of us, and to the great Damage of him the said W. and contrary to the Form of the Ordinance aforesaid: And have, &c. Witness, &c.

[168.]

(a) See 39 Ed. 3. 6. one cannot join, in one Writ, two Persons who refuse to serve.

And

B. Labourers
22.

And if the Servant be retained in Winter to serve, and after he will depart A from his Master in the Summer, and serve in another Place, then he whom he served in Winter, shall have a Writ to compel him to serve him in Summer, which is such:

The King to the Sheriff, &c. If W. of C. &c. then put I. of S. that he be, &c. as well to answer us as the aforesaid W. of C. Wherefore, whereas it is appointed by us and our Council for the common Utility of our Realm, that no Servant of whatsoever State or Condition he shall be, shall go away out of the Town where he dwelt in the Winter, to serve elsewhere in Summer, if he can find a Service in the said Town, under the pain of Imprisonment, except that the Men in the County of Stafford, Lancaster and Derby, and of the Marches of Wales in the Time of August, may come to labour in other Counties, and safely, as hitherto they have been accustomed to do, and may return, the aforesaid I. in the Service of him the said W. at F. in Winter lately retained, hath refused to serve the aforesaid W. or any other Person in the Town aforesaid, although he hath been often requested to serve in the same Town for a competent Salary, in Contempt of us, and to the great Damage of him the said W. and contrary to the Form of the Statute aforesaid: And have there the Names of the Pledges and this Writ. Witness, &c.

The Lords of Towns, or Justices of Peace, may commit Vagrants to Prison, B if they will not serve, and they may command the Gaoler to set him at Liberty without any other Writ.

And if a Man be retained in Service, and go wandring abroad out of his C Service, another Man may compel him to serve him, &c. because he is out of Service.

(a) And so if a Man do retain another's Servant, not knowing that he was in the Service of the other, he shall not be punished for so doing, if he do not retain him after Notice of his first Service.

(b) An Infant of twelve Years of Age shall be bound by his Covenant to D serve in Husbandry.

A Woman of such Age shall be also bound to serve in Husbandry by her Covenant.

(c) If a Man take an Infant or other out of another's Service, he shall be punished, although the Infant or other were not retained.

An

(a) Note; If it be in the same County, he ought to take Notice of the first Retainer at his Peril, but he is not punishable, if he be found Vagrant in another County, 17 Ed. 4. 7. 18 Ed. 4. 5. except he procure his Departure; and if so, he is punishable by the Statute, but if one retains a Servant, who has left his Master within the Term, or if one procures a Servant to depart within his Term, and after retains him, so that he has Notice, yet he is not punishable at Common Law *de Serviente abducto* 11 H. 4. 24. adjudged: *Sed quare*, and 6 Ed. 4. 32. seems *contra*; and if one takes my Servant out of my Service, against my Will, though it be with the Servant's good Will, yet a general Writ of Trepass lies.

(b) See the like, where an Infant of ten Years old was discharged of an Action on the Statute; *contra* if he had been twelve Years old; yet by *Hankf.* a Writ lies against a Stranger who takes him, 2 H. 4. 18. an Infant by Custom may bind himself Apprentice, 9 H. 6. 8. and the Diversity agreed. See 21 H. 6. 31, 33. 9 H. 6. 10. Stat. 5 *Eliz.* of Labourers.

(c) See where a Servant was but nine Years old, in a Writ against him, and the Husband and Wife who had retained him, the Infant was discharged, but the Husband and Wife put to answer, and they plead that he was not retained by them, and Issue taken, &c. 29 Ed. 3. 27. but as it seems to me, *Finbain* there takes a

good

An Infant by his Covenant shall be bounden to serve in Husbandry, although he may spend forty Shillings or twelve Marks by the Year.

E And so a Gentleman by his Covenant shall be bound to serve, although he were not compellable to serve. For if a Gentleman, or (a) Chaplain, or Carpenter, or such which shall not be compelled to serve, &c. (b) yet if they covenant to serve, (c) they shall be bound by their Covenant, and an Action will lie against them for departing from their Service.

F And if a Man do retain one to serve him for forty Days, and another doth afterwards retain him to serve him for a Year, the first Covenant is avoided, because the Retainer was not according to the Statute.

And so if a Man be retained to serve at every Time he shall be required, it is no Retainer according to the Statute, but a Covenant, if it be by Deed, and without Deed it is void.

G And a Man shall not have an Action against an Apprentice upon his Departure, upon the Statute 27 Ed. 3. 22.

H And if a Man do retain one to serve him, and doth not express for how long he shall serve him, he shall serve him for a Year; for that Retainer is according to the Statute. *Co. Lit.* 42. b. 9 *H.* 6. 7. 11 *H.* 4. 44. 41 *Ed.* 3. 13. 27 *Ed.* 3. 22.

If a Man who is not to have any Servant, do retain one to serve him, &c. the Retainer is void.

I He who hath not sufficient Lands of his own to occupy, shall be compelled to serve.

K (d) And a Man may retain one for two or three Years, and it is good.

L And keeping from the Servant Meat and Drink, is a good Cause for his Departure from his Service. 39 *Ed.* 3. 22. 6 *Ed.* 4. 2.

And so for Battery; or Licence to depart, is a good Cause of Departure.

M The Lord may take his Villain out of the Service of another, (e) if he hath need of Servants, otherwise not. 19 *R.* 2. 50 *Ed.* 3. 22.

good Diversity, if the Servant departs first, (where he was never lawfully retained) there an Action does not lie against him who shall afterwards retain him; *contra* if he be taken with Force, &c. Action lies, tho' he found the Infant Vagrant, and retained him. 38 *Ed.* 3. 5. See 12 *H.* 8. 10, &c.

(a) A Writ does not lie on the Statute for Departure of a Chaplain who is retained to say Mass. 10 *H.* 6. 8.

(b) See accordant 11 *H.* 6. 1. but by *Martin, Quare*, if he be retained only for a Day, if he shall defeat the Covenant, supposing the Request to serve is for a Year.

(c) But the Count ought to be special. 11 *H.* 4. 33.

(d) 29 *Ed.* 3. 27. It is doubted if a Retainer for more than a Year, be within the Statute. *Vide infra.*

(e) 29 *Ed.* 3. 41. Resolved, 1. If a Villain be forced by Distress to go to his Lord, he shall be excused against him who retains him. 2. That though the Lord or his Feoffor have not been seised of the Villain for twenty or thirty Years, yet he is not enfranchised, but the Lord may take him. 3. That the Villain may justify his Departure, *causa qua supra*, by Attorney. See 30 *Ed.* 3. 31. They were at Issue whether the Lord had need of the Service of the Villain; and *Green* doubted if it was illuable. See 9 *H.* 4. 12. the Lord had Occasion for his Service, and took him. See 19 *R.* 2. *Action on the Case* 52. for taking his Villain.

If a Woman who is a Servant doth marry, yet it seemeth she ought for to N serve (a).

If the Husband and Wife be retained in Service during their Marriage, &c. O if they depart from their Service, an Action upon the Statute lieth against them. 46 Ed. 3. Bar. 214.

If the Servant be drawn away, the Master may re-apprehend him, and keep P him in Spight of him.

If the Master's Wife do beat the Servant, it is good Cause for the Servant Q to depart and leave his Service.

Note; A Retainer by her is not within the Stat. 2 Ed. 4. 15.

[109.]

Writ de Restitutione Temporalium.

THE Writ of Restitution of the Temporalities lieth, in case a spiritual A Person be elected a Bishop, and consecrated, &c. then he shall have this Writ unto the Escheator, &c. And so it is of an Abbot or Prior, which is of the King's Foundation, and ought to have the King's Royal Assent, &c. when he is elected and established Abbot or Prior, (b) he ought to sue a Writ to be restored unto the Temporalities; and the Form of the Writ for the Prior is such:

The King to his Escheator in the County of Devon, greeting: Whereas the venerable Father H. Bishop of Exeter, hath lately confirmed the Election made in the Conventual Church of P. of our beloved in Christ Friar I. of C. Canon of the same House, to the Priory of that Place (to whom we had before given our Royal Assent and Favour) as appears by the Letters Patent of him the said Bishop to us thereof directed; We accepting that Confirmation have taken the Fealty of him the said Elect, and have restored to him the Temporalities of the Priory aforesaid (as the Custom is): And therefore we command you, that you deliver to him the said Elect the Temporalities of the Priory aforesaid in Form aforesaid.

And by that Writ appeareth, when a Priory or Abbey is void which is of B the King's Foundation, that they ought for to have the King's Royal Assent to go to the Election; and after the Election made the Bishop ought to confirm the Election, and to certify the King thereof by his Letters, and thereupon the King to take his Fealty; and he to grant this Writ to restore the Temporalities.

And there is another Writ when the King granted only his Assent to go to the Election, and to make the Prior, without any Certificate made before of the Election, and the Writ is such:

(a) See *contr. per Cur'*, 11 H. 4. 13. that it is not lawful to take her during the Espousals. 46 Ed. 3. Bar. 214. 7 R. 2. *Trespals* 206.

(b) And sometimes it was by Mandate to the Tenants of the Abbey, &c. *quod sint intendentes Abbati electi*, Rot. Parl. 1 Ed. 1. m. 20. *pro Abbate de Wells*, and see there *pro Episcopo Cant.* Rot. Parl. 2 Ed. 1. m. 24. *pro Priore d. South-*

wick; and see the Charter of King John, Mat. Paris 352. *Salva nobis & hæredibus nostris Custod. Ecclesiarum & Monasterior' Vacantium, &c.* — *Et vide Quæ vacant spectant ad Regem*, 31 Ed. 3. *Ayd de Roy* 103. 19 Ed. 2. *Quare impedit* 178. Rot. Claus. 6 Ed. 3. m. 23. *viz.* not of Churches Appropriate.

The King, &c. Whereas the venerable Father, &c. hath preferred our beloved in Christ C. of D. Canon of the same House, elected to be Prior of that Place (to which Election we had first given our Royal Assent and Favour) to be Prior and Pastor of the same Place, as appears by the Letters Patent of him the said Bishop to us thereof directed; We allowing that Preferment have taken Fealty of him the said Governor, and the Temporalities of the Priory aforesaid, &c. (as above).

C And the Prior so elected and established may have a Writ out of the Chancery directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord, &c. and that they be Attendants, &c.

D And where the Prior or Abbot ought to have the King's Royal Assent to go to Election, and obtain the same, and afterwards make the Election, and the Bishop doth avoid it, and afterwards they submit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior, &c. and make him Prior, and certify the King thereof by his Letters, the King thereupon may grant such Writ, viz.

The King, &c. Whereas the venerable Father I. Bishop of Winchester, hath avoided the Election lately made in the Church of S. D. near S. of our beloved in Christ Friar T. of N. Canon of the same House, to be Prior of that Place; and by virtue of the Submission of the Convent of the Place aforesaid made to him, to provide for the same Priory a fit Prior for that Turn, hath preferred our beloved in Christ Friar I. of W. Canon of the same Priory, to be Prior and Pastor of that Place, as appears by the Letters Patent of him the said Bishop to us thereof directed; We being willing to deal graciously with him the said I. have taken Fealty of the said I. and have restored to him the Temporalities of that Priory (as the Custom is): And therefore we command you, &c. (as above).

And by that Writ it appeareth, that the Writ is of the King's special Grace; for the King might lawfully refuse the Establishment of the Prior, because he was not elected according to the King's Licence and Assent to the same, &c. But yet the common Use is, that if they cannot agree in the Election, to submit themselves unto the Award of the Ordinary.

E And there is another Form of Writ where the King grants his Royal Assent to any Chapter to chuse the Bishop, and they chuse one of the Chapter; and because the Archbishoprick is void, the Guardian of the Spiritualities doth (a) certify that Election unto the King, and his Confirmation upon the same; and upon that the King grants a Writ of Restitution, &c. in such Form:

The King, &c. Whereas our beloved in Christ the Prior and Chapter of the Church of Christ of Canterbury, Guardians of the Spiritualities (the Archiepiscopal See of Canterbury being void) have confirmed the Election lately celebrated in the Cathedral Church of the discreet Man Master H. of H. Archdeacon and Canon of the same Church, to be Bishop of that Place (to whom we had first given our Royal Assent) as by the Letters Patent of the said Prior and Chapter thereof to us directed appears; We the Confirmation, &c. (as above).

F And before the Statute of *Præmunire* the King might seize the Temporalities of the Bishop, if he came to the same by Provision of the Pope; but now he shall forfeit all his Lands and Goods by the Statute of 16 R. 2.

(a) See this Certificate by Letters of the Metropolitan, with a special Conclusion, (forbidding any to say) the contrary. 21 Ed. 3. 40.

And it appeareth by the Register, if a Bishoprick of *Ireland* be void, that they shall sue to the King here in *England* to go to Election of another, and after the Election made they ought to have his Royal Assent to that Election, upon Certificate of the Election to the King: And thereupon a Writ shall be out of the Chancery here to the Chief Justice of *Ireland*, or his Lieutenant, rehearsing the whole Matter, commanding him to take the Bishop's Fealty; and to restore to him the Temporalties; but now the Course in *Ireland* is to make such Writs there in the King's Name, but the King doth nominate the Bishops there, and also in *England*; and then the Chapter shall chuse him whom the King hath nominated unto them; and thereupon the Writs are made of Course.

[170.] But how and in what Manner Archbishops and Bishops shall be elected, nominated, presented, invested and consecrated unto the Dignity of an Archbishoprick or Bishoprick, see the Statute thereof made 25 H. 8. cap. 2.

And the King may give Power to another to give his Assent to go unto the Election, and to certify the same Election unto him again, and thereupon to take the Fealty of the Abbot, Prior or Bishop, and to certify the King thereof in the Chancery. And the Writ of *Dedimus potestatem* shall be such:

The King to his beloved I. of C. his Constable of his Castle of A. B. greeting: We compassionating the Poverty of our beloved in Christ the Sub-Prioresse and Nuns of the Priory of B. (void by the Death of M. of good Memory, lately Prioresse of that Place) to whom we have lately given leave to elect, and we being willing to spare their Labours and Expences, have graciously given to you Power to give the Royal Assent in our stead to the Election made of a future Prioresse in the said Church, or in the next to be made. And when such Election by the Letters Patent of them the said Sub-Prioresse and Nuns, sealed with the Seal of their Chapter, to us thereupon directed, shall be presented unto you, to signify such Assent by your Letters to the Diocesan of the Place, that he may further execute that which concerns himself, and also to receive the Fealty of the same Prioresse in our Name, if the said Election shall happen to be canonically confirmed, and it shall thereupon appear to you by the Letters Patent of him the said Diocesan to us thereupon directed; And therefore we command you, that you do about the Premises in Form aforesaid, and certify us under your Seal distinctly and openly of the Fealty aforesaid, when you have taken it, sending to us as well the Letters of them the said Sub-Prioresse and Nuns, as the Letters of him the said Diocesan aforesaid. Witness, &c.

And if the Dean and Chapter go to the Election of the Bishop without the King's Assent, and certify the same to the King, the King may chuse whether he will assent to the Election or not; and if he will give his Royal Assent to the same, then he shall send a special Writ to some Person to take Fealty of him; and the Writ in the Register is such:

The King to his beloved and faithful I. his Justice of Ireland, greeting: Whereas our beloved in Christ the Dean and Chapter of the Church of B. (their said Church being lately void by the Death of Luke of good Memory, lately Bishop of that Place) have chosen our beloved in Christ M. I. Dean of the Church aforesaid, for their Bishop and Pastor, and have besought us by their Letters Patent, that we would vouchsafe to give the Royal Assent to the Election: We (although the same Dean and Chapter have not first requested of us Licence of electing, as the Custom is) being willing, nevertheless, to do especial Favour to them for this Time, are induced

duced to give the Royal Assent to the said Election, being unwilling that they should be molested or in any wise aggrieved, although they did not request such Licence; being moreover willing to do a more profitable Favour to him the said Eleēt, that his Labours and Expences may be spared, we have given you Power, that if such Election happen to be canonically confirmed by the Metropolitan of the Place, and it shall so appear to you by the Letters Patent of him the said Metropolitan to us thereupon directed, then you may receive in our Name the Fealty of him the said Eleēt due to us in this Behalf, and may in our stead cause the Temporalities of that Bishoprick to be restored to him, as the Custom is, having first received from the Bishop eleēt his Letters made with his Seal, &c. and sealed with the Seal of his Chapter, that our Favour which we have at present done, being of our mere Liberality, may not turn to the Damage of us or our Heirs, &c. Witnesses, &c.

Licence to go to Election.

D THE Form of the King's Licence to go to Election is thus (a):

The King to his beloved in Christ the Prior and Convent of the Monastery of Peterborough, greeting: We are humbly supplicated on your Part, that whereas your Church aforesaid is destitute of the Help of a Pastor by the Death of M. of good Memory, the last Abbot of that Place, we would vouchsafe to grant leave to you of chusing for yourselves another for Abbot and Pastor of the same House; We being favourably inclined to your Prayers in this Behalf, have thought fit to grant unto you that Licence, commanding you that you chuse such a one for Abbot and Pastor, who is devoted to God, necessary for your Church aforesaid, and profitable and faithful to us and our Kingdom. In Witness whereof, &c.

E And when they have made their Election, they ought to sue a Writ to have the King's Royal Assent to that Election, and that Assent shall be made by Writ directed to the Bishop of the Diocese, and shall be such:

The King to the venerable Father in Christ P. by the same Grace Bishop of Lincoln, greeting: Know ye, that we have given the Royal Assent and Favour to the Election lately made in the Conventual Church of the Monastery of B. of your Diocese (void by the Death of W. of good Memory, the last Abbot of that Place) of M. Sub-Prior of the same House; or of Friar B. a Monk of the same House, to be the Abbot of that Place; and this we signify to you by the Tenor of these Presents, that you may execute that which to you belongeth in this Behalf.

(b) And the Abbot, when he is made Abbot, may sue Letters Patent, directed to his Tenant, reciting how he is made Abbot, and how the King hath restored to him the Temporalities, commanding them that they be attendant upon him as their Lord.

(a) See Rot. Pat. 1 Ed. 3. m. 4. *Electio confata eo quod Licentia Regis non fuit requisita, & de concilio Regis Episcopus Dunelm' prefecit Abbatem loci Diocesani.* And note; this was in Ireland.

(b) Note; The King may at this Day create a Bishop *per Annula' & Baculu'*, or by Letters Patent. Mich. 13 Jac. 1. B. R. Rot. 155 or 151. adjudged.

Writ of Decies tantum.

[171.] **T**HE Writ of *Decies tantum* lieth, where any of the Jury who is sworn, A
 21 H. 6. 52. taketh of the one Party, or of the other, or of both, to give their Ver-
 5 Ed. 4. 2. dict, &c. Then he who will may sue this Writ, for it is an Action popular.
 Therefore the And the Writ of *Decies tantum* lieth against all the Jurors, although they
 Release of the Party is not severally take Sums of Money, as some more, some less.
 good against the King. 40 Ed. 3. 33. 44 Ed. 3. 36. 36 H. 6. pl. 1. and fol. 28.

Co.Lit.369 a. And *Decies tantum* lieth against an Embraceor, if he take Money, as well
 17 Ed. 4. 5. as against a Juror, otherwise not.
 One Juror may pay his Companions to pass with the one, or the other, because he is persuaded in Conscience with him.

Co.Lit.369. a. (a) And an Embraceor is he who cometh to the Bar with the Party, and B
 6 Ed. 4. 5. talketh in the Cause, or standeth there to Survey the Jury, or to put them
 13 H. 4. 16. in Fear: but the Lawyers may plead in the Cause for their Fees, but they can-
 accordant for not labour the Jury, and if they take Monies so to do, they are Embraceors.
 Attornies.

37 H. 6. 31. And the *Decies tantum* doth not lie against the Embraceor, if he embrace C
 acc. per Cur. and take no Money; for he ought to take Money, and also embrace, if the
 22 H. 6. 5. Action be maintained.

27 H. 6. 3. And *Decies tantum* lieth against the Jurors, although they do not give a
 21 H. 6. 20. Verdict, if they take Money; and so if they give a true Verdict, a *Decies*
 1 Ma. Dyer *tantum* lieth if they take Money.

95. And a *Decies tantum* may be sued against the Jurors and Embraceors, and D
 29 H. 6. 52. it may be sued against the Justices of *Nisi Prius* by Bill, and it may be ad-
 41 Ed. 3. 5. journed from them in *Banco*. And the Form of the Writ is such: E

40 Ed. 3. 33. *The King to his Justices of the Bench, greeting: Whereas in our Statute at*
 41 Ed. 3. 9. *Westminster, set forth in the fifth Year of our Reign, it is (amongst other Things)*
 Certain Jurors *ordained and appointed, that if any Juror in Assises, Juries or Inquests, take of the*
 took Money of *one Party or the other, and of this be duly convicted, that from thenceforth he*
 the Party after *shall not be put in Assises, Juries or Inquests; and nevertheless he shall be commit-*
 their Verdict, *ted to Prison, and further ransomed at our Will; and S. and W. lately put in a*
 without any *certain Inquest between A. Demandant, and R. Tenant of one Messuage with the*
 Covenant *Appurtenances in N. to be taken before you in the Bench aforesaid, took (b) as well*
 made before, *of the said A. as of the said R. against the Form of the said Statute, as we have*
 viz. each a *received Information: We willing that Statute to be inviolably observed, command*
 Mark, and *you, that having called before you the said W. and S. if it may appear to you,*
 were thereof *that they were put in the Inquest aforesaid, and have taken as well of the said A.*
 convicted by
 Verdict, and
 fined each a

Mark; so note, that is out of the Statute, and there was no committing him to Prison, 39 Aff. 19. Brion. *Decies*
tantum 15. 8 H. 6. 9 & 10. Not guilty is no Plea in *Decies tantum*: But he ought to say, that he took no
 Money, 6 Ed. 4. 5. For in a Writ of Maintenance he must say, he did not maintain.

(a) If an Attorney promises or gives any Thing to the Jury, it is Maintenance, and punishable; but a *Decies tantum* does not lie against the Jurors for such Taking 13 H. 4. 15.

(b) *Ad grave Damnum & nostri Contemptum*, without saying *ad grave Damnum* of the Plaintiff, because it is an Action popular. 21 H. 6. 54. *vide infra* H.

as of the aforesaid R. then having inspected the Statute aforesaid, you further do thereupon, that which ought of Right, and according to the Statute aforesaid, ought to be done. *Witness, &c.*

F And upon this Writ the Justices shall make Procefs for the King against the Party, which Writ shall be a *Pone* (as it seems) to attach him to appear, and to answer the King for the same; and there is another Form of Writ for the Party thus:

G *The King to the Sheriff, &c. If W. H. shall make you secure, then put, &c.* ^{38 Aff. 9.}
 I. S. I. F. and W. K. &c. that they be before us from the Day of Saint Michael in three Weeks, wheresoever we shall then be in England, as well to answer us as the aforesaid W. H. wherfore, whereas in the Parliament of Lord Edward lately King of England, &c. held at Westminster in the thirty-eighth Year of his Reign, amongst other Things it is agreed, That if any Jurors in Assises, Juries and other Inquests to be taken between us and the Party, or Party and Party, do any thing take by themselves or others, of the Party, Plaintiff or Defendant, to give their Verdict, and upon this be convicted by Procefs in a certain Article touching Jurors, made and ordained in the thirty-fourth Year of the Reign of our said Grandfather, whether it be at the Suit of the Party, who for himself, or for us, or any other Person, will prosecute, every one of the Jurors aforesaid shall pay ten Times as much as he hath received, and he who makes the Suit shall have one Moiety, and we the other Moiety; and that all Embraceors bringing or procuring such Inquests in the Country for Gain or Profit to be taken, shall be punished in the same Manner and Form as the Jurors; and if a Juror or Embraceor so convicted have not whereof he can make Satisfaction in Form aforesaid, he shall be imprisoned for one Year, as in that Ordinance is more fully contained; the aforesaid I. S. I. F. and W. K. Jurors put in a certain Inquest which was lately summoned and taken before the Justices of Lord Richard the Second, lately King of England after the Conquest, of the Bench at Westminster, by the Writ of him the said late King, of Record between R. F. and the aforesaid W. H. of the Beasis of him the said R. taken and unjustly detained, as it was said, for giving their Verdict in this Behalf, and the aforesaid W. D. and L. I. Embraceors of the same Jury, to bring and ^{21 H. 6. 54. Exception was taken for want of the Words, grave Damnum, &c. and disallowed, being a popular Action.}
 H procure the same, took of the aforesaid R. divers Sums of Money and other Gifts, ^{41 Ed. 3. Decies tantum 12.} at the City of Westminster, in Contempt of us, and to the great Damage of him the said W. H. and against the Form of the Ordinance aforesaid: And have there the Names of the Pledges and this Writ. An Ambidexter is that Juror or Embraceor, who taketh of one Part and the other, to restore ten Times as much, &c. See Statute of 27 Ed. 3. c. 3. 33 Ed. 3. c. 8. 38 Ed. 3. c. 12.

Writ of Champerty.

[172.] **T**HE Writ of *Champerty* lieth, where a Man by Covenant or Agreement A
made by Writings or by Word, agreeth to have Parcel of the Thing or
47 Ed. 3. 9. Land, or Debt which is in Suit, that shall be recovered, if he do recover,
to maintain and aid him in the Action, and in the Manner for which he sueth.
(a) Then he who is grieved shall have this Action against him who maintain-
eth the Suit for the same Intent; and the Writ is such:

The King to his Justices of the Bench, greeting: Whereas amongst other Articles which Lord Edward lately King of England, &c. granted for the Amendment of the State of his People, it is ordained, that none of his Ministers, nor any other Person, for Part of the Thing which is to be had in the Plea, shall take upon himself to maintain the Businesses which are in the Plea; nor shall any Person upon any such Covenant give up his Right to another. And L. hath now taken upon himself to maintain (b) the Plea of the Plaintiff which is before you, by our Writ between A. Demandant, and B. Tenant, of one Messuage with the Appurtenances in I. for having Part of the same, against the Form of the Ordinance aforesaid, as we have received Information: We willing that Ordinance to be inviolably observed, command you, that you having inspected the Tenor of the Ordinance aforesaid, further cause to be done thereupon, that which of Right, and according to the Form of the Ordinance aforesaid, ought to be done. Witness, &c.

(c) And upon that the Justices shall award an Attachment against the Party B
out of the Common Pleas, &c. returnable at a certain Day.

And this Suit shall be said the King's Suit; but yet the Party may sue an C
original Writ out of the Chancery against him, who purchaseth Parcel of the
Land depending the Plea, &c. And the Statute which giveth the Action, is
the Statute of *Articuli super Chartas, cap. 11. (d)* which willet that no Minister
or other for Part of the Things which are in Plea, take upon him any Matter
which is in Suit; nor none upon any such Covenant shall give up his Right;
and if any do so, and be attainted thereof, then shall be forfeit unto the King
so much of his Lands and Goods of the Taker, as doth amount unto the
Value of the Part he hath purchased by such Taking upon him.

30 Aff. 5. And by those Words it seemeth that he, who loseth his Land pendent the
Br. Champ. 7. Suit, or giveth Parcel thereof pendent the Plea, to the Intent aforesaid, shall
be punished as well as he who is the Purchaser. 30 Aff. 15. cont. *F. Cham-*
perty 5. cont.

Br. Champ. 7. Anno 30 Ed. 3. *Lib. Aff.* It is no Plea to say he did not purchase pendent D
Fitz. 11. the Plea; by which it seemeth if he purchase before the Writ sued to main-

(a) See 12 Ed. 3. *Champerty 9.* Where the King sued a Writ of *Champerty, &c.*

(b) Without alledging that the Party had maintained in the Writ, for that the Writ is *ad dampnum*; Note, The Justices may amend a Writ directed to them, but not a Writ directed to the Sheriff. 22 H. 6. 7.

(c) Note; Process of Outlawry is in Maintenance, but not in a Writ of Conspiracy. 22 H. 6 7.

(d) See 20 H. 6. 30. It is doubted if the Writ lies in this Case; for it is not warranted by any Statute.

- tain, &c. that he shall be punished, &c. by the Statute; *tamen quere.* For 19 Fitz. Champ. 15.
R. 2. Champerty 15. it is holden by all the Court, that if a Man bargain for any Lands by Deed, and afterwards an Action is brought for the same Land, and afterwards pendent the Plea he maketh Estate to him, to whom he made the Bargain, that it is not Champerty. 9 H. 7. 18. ac. Plow. Com. 465. acc.
- E A Surrender made by him in the Reversion pendent the Plea is not Champerty. 17 Ed. 2. Champ. 14.
- F And if a Man purchase Land *bona fide* pendent the Writ, and not to maintain, it is not Champerty. 21 Ed. 3. 10, 52. 50 Aff. 3. 17 Ed. 2. Champerty 6, 14. 50 Aff. 3. Br. Champ. 8. 22 Ed. 3. 10. Br. Champ. 4, 47 Ed. 3. 9. 6 Ed. 3. 3. Fitz. Champ. 10.
- G And a Disseisor in an Assise shall have a Writ of *Champerty*, if the Disseisee grant Part of the Land by Covenant to maintain, &c. 32 Ed. 3. Champerty 6. contra 14 H. 6. 7. 1 Inst. 21. 4 Ed. 3. Champerty. 7 Ed. 4. 12. Litt. 4. cont. 6 Ed. 3. 33. Nat. Br. 180.
- H And a Man may give to his Son in Frank-marriage, or for Life, and it shall not be said Champerty, for the Statute in the End thereof is in such Manner. But that is not to be intended, that a Man may not give Counsel Fees for their Pleading. *Dyer* 301, 274. *Bro. Champerty per tot.* 17 Ed. 2. *Champerty* 14. *Nat. Br.* 180. B.
- I And in a Writ of *Champerty*, 17 Ed. 2. where the Writ did abate for false *Latin*; the Defendant was put to answer the King's Suit for the same Matter.
- K And if a Man grant a Rent out of the Land, pendent the Suit for the Land, the same is Champerty, although that that Rent is not as a Demand, &c.
- L And Champerty lieth as well upon Covenant made by Word, &c. as if it were made in Writing to have Parcel of the Thing, &c. Ant. 171. 30 Aff. 15.
- M And if the Covenant be to have a Rent out of the Land of another which is not in Suit, it is not Champerty. But if he do maintain, &c. he shall have a Writ of *Maintenance* against him for the same, but not a Writ of *Champerty*.
- N And if the Officers of the Court do maintain any Plea pleaded in their Court to have Part of the same, or other Profit by the Recovery in that Action, the Party grieved shall have such a Writ:
- The King to the Sberiff, &c. If R. and M. his Wife shall make you secure, &c. then put, &c. I. and W. Bailiffs of our City of Winchester, W. and W. that they be before our Justices, &c. to shew wherefore, whereas by the Common Council of our Realm it is provided, that none of our Ministers, or any other, shall maintain Pleas, Complaints, or (a) Businessses which are in our Courts or elsewhere, of*

(a) Note; if one gives Money to another to purchase an Appeal, this is not Maintenance; *contra* 1 R. 2. c. 4. if he gives it after the Appeal purchased, *per Markbam*, 3 H. 6. 34. and one cannot maintain another, except there be some Relation between them; and therefore in such Case the Grantor or the Grantee may shew and produce Evidences, &c. where the Grantee is impleaded, though no Voucher or Warranty of Charters be sued against him: So a Servant or Cousin to the Tenant may maintain generally, 11 H. 6. 41. and in an Appeal by a Servant the

Master may retain Counsel, pay Fees, &c. with his own proper Goods, &c. and so may the Son for the Father: So giving of Money, &c. to a poor Man by Way of Alms, &c. is no Maintenance; yet to stand with a Stranger at the Bar is Maintenance. 21 H. 6. 16. So it is for a Stranger to shew to the Jury the Truth of the Matter, or to say that he will spend twenty Shillings for J. S. though he does not give any Money to labour the Jury; yet it is Maintenance, though he does not labour the Jury. See 22 H. 6. 5.

Writ upon the Statute, &c.

Lands and Tenements, or other Things whatsoever, for having Part of the Thing demanded, or other Profit, by Agreement made thereupon, nor shall any one upon any such Covenant give up his Right to another, the aforesaid I. and W. W. and W. a certain Plea of fresh Force, which is before the Mayor and the said Bailiffs of the City aforesaid, between S. and A. his Wife Demandants, and the aforesaid R. and M. Tenants, of one Messuage with the Appurtenances in the City aforesaid, for to have Part of the Tenement aforesaid, and other Profits thereof, have now taken upon themselves for the aforesaid S. and A. to maintain, and do maintain, to (a) the great Damage of them the said R. and M. and against the Form of the Statute aforesaid: And have, &c.

Writ upon the Statute, That none be Victualler for the Time that he is Mayor, or Sheriff, or Head-Officer of a Town or Borough.

[173.] **N**OTE, That by the Statute of *York*, no Victualler shall use the Occupation to sell Victual or Wine in Gros or by Retail, so long as he is in Office in any Town, Borough or City, to keep the Assise of Bread and Wine, upon Forfeiture, &c. If a Man who is a Victualler be chosen to be Mayor, Sheriff, or other Officer of a Town, Borough or City, who by Reason of his Office is to keep the Assise; by the Statute of 3 *H. 8. cap. 8.* it is ordained, That two discreet Persons of the same Town, &c. who are not Victuallers, be chosen and sworn to assise the Assise of Bread, Wine, and Victual, during the Time that he is in his Office, and then, after the Price assessed of Wine and Victual, for the Time, it shall be lawful for him who is chosen Mayor or Sheriff, to sell Wine and Victual for the Time that he is Officer. But that **A** Statute doth not extend to *London, York, or Coventry*, to sell or retail Wine or Victual, but in Gros they may. And by the Statute of 6 *R. 2. cap. 9.* That Victuallers be not chosen to the Office of Judge in Towns or Cities, but for Want of others, then he shall not sell Victuals upon a Pain of Forfeiture.

But it appeareth by the Statute of 3 *H. 8.* what Things he may do.

And if any Man in *London, York, or Coventry*, or other Place, offend against those Statutes, then he who is grieved may sue a Writ directed to the Justices of Assise, commanding them to send for the Parties, and to do Right, &c. **B** Or the Party grieved may have an Attachment against the Officer, Mayor, Sheriff or Bailiff, who offend contrary to the Statute, to appear before the Justices in the King's Bench, or before the King in the Common Pleas, to answer the Matter. And the Form of the Writ unto the Justices of Assise is such:

(a) Note; If he shews any Maintenance, it shall be said to be Maintenance pending the whole Plea, although it be only a transient **A&**. 22 *H. 6. 6. per Cur.*

The King to his beloved and faithful A. and B. Justices assigned to take the Assises in such a County: Whereas for the common Profit of the People of our Realm it is appointed, that no Officer in Cities or in Buroughs, who by reason of his Office ought to keep Assises of Wines or of Victuals, so long as he is attendant to that Office, shall merchandize for Wines nor for Victuals in Gross nor by Retail. And now R. of B. hath given us to understand, that S. and M. Bailiffs of the Town aforesaid, and certain other Bailiffs in the said Town of S. who by reason of their Office ought to keep such Assise in the said Town, sell Wines and Victuals in Gross and by Retail, against the Form of the Statute aforesaid; We, if it be so, willing to apply a Remedy in this Behalf, command you, that having heard the Complaint of the aforesaid R. and having called the Parties before you, and heard their Reasons severally thereupon, and having inspected the Tenor of the Statute aforesaid, you cause to be done to him the said R. as well for us as for himself, due Justice hereupon, as ought to be done, according to the Statute aforesaid. Witness, &c.

And if the Action be brought upon the Statute of York, then he who sueth the Action shall have the third Part, and the King shall have the Residue of the Victuals which is forfeited. And also the Form of the Writ of Attachment is such:

The King to the Sheriff of Yorkshire, greeting: Put, &c. P. T. of Richmond, lately Bailiff of the Town of Richmond, that he be before us, &c. to shew wherefore, whereas for the common Profit of our Realm of England it is agreed by the Common Council of the same Realm, that no Officer, &c. by Retail, under the Forfeiture of the same, the aforesaid P. while he was Bailiff of the said Town of Richmond, oftentimes merchandized in Wines and divers other Victuals, to the Value of one hundred Pounds, in the aforesaid Town of Richmond, as well in Gross as in Retails, and there sold them, as it is said, in manifest Contempt of us, and to the great Damage of our People, and against the Form of the Ordinance aforesaid: And have, &c. Witness, &c.

Writ upon the Statute of Articuli Cleri, that he do not distrain in the Glebe of Parsons; nor in the King's Highway.

THE Writ that no Distress be taken in the Glebe Land of the Parson by the Sheriff or other Officer, is grounded upon the Statute of *Articuli Cleri, cap. 6.* By which Statute it appeareth, that the Sheriff nor other Officer shall (a) not distrain in the King's Highway, nor in the Glebes of ancient Times

(a) See where a Bailiff by Warranty on a Commission out of the Exchequer to levy a Sum certain on the Dean and Chapter of C. on a Tax granted to the King, distrained in Parcel of the Parsonage of the Church of K. which was a Sanctuary, and the Dean and Chapter brought

a general Writ of Trespass; and for that he took it by Virtue of a Commission and Grant, though nothing had been due; yet he shall not be said to come *vs & armis & contra pacem*; and therefore the Plaintiff ought to have aided himself by a special Writ, or at least by a Replevin;

Times given to Rectories, and if any Sheriff or other Person do contrary, then he who is distrained may sue this Writ.

See Marlebr.
cap. 55.
V. 17 Ed. 5. 43.
Fitz. Reicous
14. the Party
may rescous.

And if a Lay Person be distrained in the King's Highway, &c. he shall have an Action upon the Statute of *Marlebridge*. But a spiritual Person shall have his Action upon this Statute. But by the Statute of *Marlebridge* the King's Officers may distrain in the Highway. And after the Writ delivered to the Sheriff, if he be distrained again, he shall have an *Alias* and *Pluries*, and thereupon an Attachment. And this Writ is in itself a Prohibition to the Sheriff; and the Writ is such:

The King to the Sheriff, &c. greeting: Whereas in the Articles of the Prelates and Clergy of our Realm granted by Lord Edward lately King of England, our Grandfather, with the Assent of the Nobles and great Men of our Realm, that Distresses shall not be made upon Rectors by the Sheriff, or others our Ministers, in the King's Highway, or in the Fees wherewith Churches in Times past have been endowed; and now, from the grievous Complaint of our beloved in Christ the Abbot of Vale Royal, Parson of the Church of K. we understand that you, by Colour of your Office, have lately entred the Lands and Tenements which are of the Dowry and Fee of the same Church at K. and have grievously distrained the aforesaid Abbot in the Lands and Tenements aforesaid, and do not desist to distrain thereupon, to the Prejudice of him the said Abbot, and to the manifest Hurt of Ecclesiastical Liberty, and against the Form of the Articles aforesaid: We willing to keep the Ecclesiastical Liberties unhurt command you, that you in no wise make any Distresses in the Lands and Tenements which are of the Dowry of the Church aforesaid, nor attempt any thing that may tend to the Hurt or Weakening of Ecclesiastical Liberty, and the Distress (if any you shall have made) upon the said Abbot in the Fee of his Church aforesaid, as before is said, without Delay you shall release to him, &c. Witness, &c.

[174.]

And it seemeth, that the Party who is distrained in the King's Highway, A or the Parson in the Glebe of his Church, shall have an Attachment against the Sheriff, or other who distrained, although they never sued out before this Writ of Prohibition to the Sheriff; because that the Statute is a Prohibition itself to the Sheriff, &c.

And by the Statute of *Articuli super Chartas*, cap. 12. the Sheriff ought B not to make excessive Distress for the King's Debt, nor distrain the Plough Cattle, if he can find others. And if the Party will find Sureties to the Sheriff to pay the King's Debt before the Day of the Return of the Writ, the Sheriff ought to deliver back the Cattle. And if the Sheriff do otherwise than is expressed in the said Statute, the Party upon that Statute shall have Attachment against him, or he may sue forth a Writ to inhibit the Sheriff, that he do not distrain contrary to the Form of the Statute; and the Writ is such:

plevin; and the Plaintiff took nothing by his Writ, 26 Ed. 3. 70. and so note the Liberty of the Church is not exempted from temporal Jurisdiction. See in the like Case, where in Trespas's *contra pacem*, for distraining in a Sanctuary, the Defendant justifies as the King's Bailiff for

Issues lost by the Prior, and that a Precept from Sheriff came to the Plaintiff, commanding him to levy it, &c. and that he entred, &c. for that he could not find any Distress elsewhere, &c. and the Writ was abated for that Cause, *i. e.* it not being *contra pacem*. 28 Ed. 3. 97.

The

The King to the Sherfff of Derbyshire, greeting: Whereas amongst other Articles which Lord Edward of famous Memory, some time King of England, our Grandfather, ordained for the Amendment of the State of the People of his Realm, it is contained, that too great Distresses shall not be taken for our Debts, and that if the Debtor can find sufficient Security for the Debt, until a Day before the Day limited to the Sherfff, that such Distress shall be released in the mean time; We command you, that if I. of W. shall find you sufficient Security to answer us at your next Profer for one hundred Shillings, by which he made Fine with us before our Justices of the Bench, for Licence of Concord in a Writ of Covenant, and which you require of him by Summons of our Exchequer, as it is said, then the Distress which you make upon him upon the Occasion aforesaid, in the mean time supersede by the Security abovementioned: And have you there this Writ. Witness, &c.

And there is another Form of Writ in such Case, thus:

The King to the Sherfff, &c. That too great Distress shall not be taken for our Debt, nor driven too far; and if the Debtor can find sufficient and competent Security for the Debt until a Day before the Sherfff's Day, within which Time the Debtor may be able to acquire to himself Relief thereupon, or otherwise satisfy the Debt, that such Distress shall be released in the mean time; We command you, that if I. of T. whom you distrain, by virtue of a Summons of our Exchequer to you directed, for eight Shillings to be paid to us of his Issues, forfeited before us and elsewhere before our Justices, as it is said, shall find you sufficient Security, according to the Articles aforesaid, for the said Debt until a Day before your Day, at which you are bound to account thereof, then in the mean time release the Distress (if you shall have caused any to be made upon him the said I. by reason of the Premises) for the Security abovementioned. Witness, &c.

Writ for to seize the Land of the Wife which she holdeth in Dower, who marrieth herself without Licence.

CNOTE, That if the Tenant holdeth of the King *in Capite*, and dieth, &c. See after 263, 264, 265. His Wife ought not to marry herself again without the Licence of the King; and if she doth, then the King may seize those Lands which she holdeth in Dower, until she have paid a Fine to the King, which is commonly one Year's Value of the Land which she holdeth in Dower; and that is by the Statute of *Prærog. Regis, c. 3.* But it appears by the Register, that the King ought to seize as well the Land of the Husband, as the Land of the Wife which she holdeth in Dower.

And by the same Reason, if the Wife have other Lands of her own Inheritance, besides the Land which she holdeth in Dower; that the King may seize that Land also; and the Writ in the Register for to seize the Land, is such:

The King to his Escheator, &c. Because Margaret, who was the Wife of Edward Baron Stafford deceased, who held of us in Chief, hath married herself to Thomas of P. without the Licence of us, or of our beloved and faithful Ralph

Basset, to whom we granted that which belonged to us of the Marriage aforesaid, as we have received Information by the Complaint of him the said Ralph; We command you, if so it is, that then without Delay you seize into our Hand all the Lands and Tenements, as well of him the said Thomas as of the aforesaid M. in your Bailiwick, and cause them to be kept safely, until you shall have other Matter in Commands thereupon from us. *Witness, &c.*

But now by the Statute of 23 H. 8. c. 46. the Composition is given to the Master of the Wards with three of the Counsel of that Court: So they may tax a reasonable Fine at their Discretion, according to the Statute of *Prærogativa Regis*. *Stamf. 19. acc.*

And it appeareth by that Writ, that the King may grant the Marriages of D his Widows, as well as of his Wards; and that the Woman may agree with him to whom the Marriage is granted, and by his Assent or Licence if she marry, it seemeth she shall not pay a Fine. And if she marieth without Licence, then he who marieth her doth the King or his Grantee Wrong; and that Wrong seemeth to be the Cause, that the King shall seize the Land of him who marieth the King's Widow without Licence.

[175:] And it appeareth by the Register, That the said *Thomas P.* may agree with the said *Ralph Basset*, for which the King shall receive his Seizure; as appeareth *Rotulo Clerum Anno 8 Ed. 2.* But yet I conceive, that the King ought to seize but only the Lands which the Woman holdeth in Dower, because the Statute giveth no more, but that he shall seize that which she holdeth in Dower; for if she will not claim nor sue for Dower, it seemeth she shall not be fined, nor none of her Land seized: And also I conceive, that the King cannot grant the Marriage of his Widows as he may do of his Wards; for if she will live single and not marry, she may so do, and shall not pay any Fine. *Ideo quære.*

Bro. Fines 63. cont. If she gets Dower at the Hands of the Heir, or of the Committee without Oath, quære, whether she may marry without Licence. *Stamf 19.* No, because presently upon the Assignment she is a Tenant to the King, and not to the Heir.

Stamf. Prærog. 18. 40 Ass. 36. The King's Widow had Dower without Assignment. *Vide Stamf. 18. 35 H. 6. 52.*

Writ upon the Statute de Anno Primo Ed. 3. c. 12 & 13.
Where the King's Tenant alieneth without Licence.

B. Tenure 34. 45 Ed. 3. 6. **N**OTE; Where the King's Tenant who holdeth of the King in Chief, as of his Crown, alieneth the Land which he so holdeth of him (a) for Life, or in Tail, or in Fee, without the King's Licence, then the King ought for to seize the Land for a Fine, &c. But if a Man holdeth of the King, as of any Honour, or Castle, or Manor being in his Hands, which he hath by Descent from any collateral Ancestor, and the Tenant doth alien, as above, his Lands without Licence granted him by the King; then if the Sheriff or Escheator will distrain or disturb the Possession of the Alienee, he shall have a Writ upon the Statute of 1 Ed. 3. cap. 13. which shall be such:

(a) See *contra* 24 Ed. 3. 71. but 45 Ed. 3. 6. accords; yet see here *infra*, that on an Alienation for Life or in Tail, a *contra Formam Collationis* does not lie.

The King to his Escheator beyond Trent; or, To his Escheator in the County of S. greeting: Whereas it is appointed by the Common Council of our Realm, that no Man be grieved by reason of purchasing of Lands and Tenements which are held of us as of Honours, (the Licence of our Progenitors formerly Kings of England, or of us for this Purpose not being obtained); We command you, that you do not disturb R. the Son of I. of C. Chaplain, by reason of the Purchase which he made in the Time of Lord Edward lately King of England, of Robert of Samby, Knt. of one Ofgang of Land with the Appurtenances in E. which he holds of us in Chief as of the Honour of T. as it is said, if so they hold of us, against the Form of the Statute abovementioned. Witnesses, &c.

And upon that he shall sue an *Alias* and *Pluries, vel Causam nobis significes, &c.* And thereupon an Attachment against the Escheator or Sheriff, if they disdain or disturb him after that Writ directed unto them, if the Lands be holden as above is said. But it appeareth by that Writ, that a Man may hold of the King *in Capite*, as of an Honour, but the same is against the Register in the Beginning of the Register; as appeareth by the *Præcipe in Capite*: But the Use at this Day is to take a Fine of him who holdeth of the King of any Honour, which is the ancient Inheritance of the King, who alieneth his Land without Licence: But *quære* what in Right ought to be done in that Case.

Writ quod Clerici non eligantur in Officio Ballivi, &c. pro Terris suis.

IF a Man, who holdeth certain Lands or Tenements, by reason of his said Lands ought to be chosen Bailiff, or Beadle, or Reeve, or in such like Office for his Lands; if such a Man be made a Clerk, or is within Holy Orders, then he ought not to be chosen into such Office for his Lands. And if he be elected to such Office of Bailiff or Beadle, &c. he shall have a Writ to discharge him, which shall be such:

The King to the Bailiffs of I. of L. greeting: Whereas according to the Law and Custom of our Realm of England Clerks ordained in Holy Orders ought not to be chosen to the Office of Bailiff or Bedel, nor have hitherto been accustomed; and now we have received Information on the Behalf of F. of M. Master of our Hospital of C. Chaplain, that you have now of late chosen him the said Master to the Office of Bailiff or Bedel of the Manor aforesaid, and endeavour to compel him to take upon him that Office, to the great Damage of him the said Master, and against the Law and Custom aforesaid; whereupon he hath besought a Remedy to be provided for him by us, and because it is not consonant to Right, that the said Master (who continually serveth us in the said Hospital for our safe Estate, and for the Souls of our Ancestors some time Kings of England, and for the Estate of the said Hospital, and in singing Masses, in Alms, and other pious Works to be maintained and sustained in the said Hospital) should be compelled to stay elsewhere out of the same Hospital about secular Affairs; We command you, that you altogether supersede the Distress and Compulsion (if any you shall have made upon him the said Master

[176.] *Master to take upon him the Office of Bailiff or Bedel in the Manor aforesaid, and release the same without Delay, and that the Monies, if any, for Amercements or otherwise, for the Cause aforesaid, you shall have levied upon him, you cause to be restored to the same Master without Delay, under the Peril that may fall thereon. Witnesses, &c. And he may have an Alias and a Pluries, and Attachment upon the same.*

Writ that Parsons nor Prebendaries should not be charged for their Goods in their Possessions to Fifteenths, which are annexed to their Prebends.

Bro. Ogund
= 24.

THE (a) Writ for Prebendaries or other spiritual Persons to be discharged **A** for their Goods of the Benefice in their Possessions lieth, where the Sheriff or Collectors of the Fifteenths will distrain the Parsons or Prebendaries in their spiritual Possessions by their Goods being in their Possessions, to be Contributory to the Payment of Taxes or Fifteenths granted, &c. And if they be distrained, they shall have such Writ :

The King to the Taxers of the Tenths and Fifteenths to us last granted by the Commonalty of our Realm of England in the County of Gloucester, greeting: It is shewed unto us on the Behalf of W. Prebendary of the Prebend of B. in the Church of S. that by reason of the Tenths and Fifteenths aforesaid granted to us by the Laity, you unjustly intend to assess, tax and levy upon the proper Goods of him the said W. of the Temporalties annexed to and issuing out of his said Prebend (which are taxed to the Tenth amongst the Spirituals in all Taxations to the Payments of such Tenths, and of which Tenths have been accustomed to be given) the aforesaid Tenth and Fifteenth among the Laity, to the great Damage and Grievance of him the said W. And because we will not that the same W. be charged for such his Goods (of which he gives us the Tenth amongst the Spirituals) for such Tenth and Fifteenth granted to us by the Laity; We command you, that you in no wise molest or aggrieve him the said W. in his Goods which are taxed to the Tenth amongst the Spirituals (and of which he gives us the Tenth as is aforesaid)

(a) See a Writ in the *Register* 181. that charges those who are Tenants in Ancient Demesne, and those who are Burgesies, with Tenths, and other Towns only with Fifteenths, except the Grant were special. *Rot. Parl.* 20 *Ed.* 3. *No.* 24. *Note*; If *A.* leases to *B.* Lands for Years which lie in *C.* and *D.* *B.* sows the Land in *C.* and after a Fifteenth is granted, and *B.* sows and sows the Corn; and *B.* having Beasts commoning in *D.* which are levant and couchant in *C.* 1. If *B.* be taxed to the Fifteenth by his Goods, &c. this shall discharge *A.* so that he shall not pay the Fifteenth for the Rent. 7 *H.* 4. 33. 2. If the Corn is sowed and inned at *D.* after the Fifteenth granted, if it be before

the Tax thereof, and he is taxed for those Goods after the Inning of them, the Tax is void, for they shall be taxed in *D.* 21 *Ed.* 3. 42. 3. *B.* shall not be taxed in *D.* for the Beasts which are there commoning, if they are not levant and couchant there. 18 *Ed.* 3. 11. 4. He may be distrained in *C.* by the Collector of the Town of *D.* after a Tax so made in *D.* 2 *H.* 4. *Quind.* 3. And *Note* well; When Collectors are made of Fifteenths, they may distrain a Man without Assessment, by the Portion of his Goods according to the Estimation; and if he be estimated more than is reasonable, he shall have a Plea to discharge himself from the Surplusage. 20 *Ed.* 3. *Asswry* 130.

by

by reason of the Tenth and Fifteenth aforesaid granted to us by the Laity, and the Distress, if you shall have caused any to be made upon him on that Occasion, cause to be released to him without Delay: Provided that he answer to us for such Tenth and Fifteenth of the Lands and Tenements, if any were purchased by him the aforesaid W. or his Predecessors to the said (a) Prebend, after the twentieth Year of Lord Edward some time King of England, our Grandfather, according to the Goods and Chattels being in the said Lands and Tenements and coming forth of the same, as is just. Witnesses, &c. And upon that he shall have an Alias and Pluries, and Attachment.

Writs directed to make Proclamation, that none cast Filth or Dung into Ditches or Rivers near Cities or Boroughs, made Anno 12 R. 2. cap. 10.

B **I**F any one cast any Dung, Filth or Intrails of Cattle into Ditches, Waters, or other Places which are next to any City, Borough or Town, he who will may sue forth a Writ directed unto the Mayor, or Sheriff or Bailiff of such Town, &c. That they make Proclamation that none so do, and that those that have so done, that they cause to remove and carry away the same from thence: And this Writ is founded upon the Statute of 12 R. 2. cap. 13. and the Writ is such:

The King to his Bailiffs of the Town of Newcastle upon Tyne, greeting: Whereas in the Statute set forth in our Parliament held at Canterbury in the twelfth Year of our Reign, it is amongst other Things contained, That Proclamation be made as well in the City of London as in other Cities, Boroughs, Towns, and the Suburbs thereof, where it shall be needful, as well within Liberties as

(a) Note; That in the twentieth Year of K. Ed. 1. all Ecclesiastical Benefices were taxed; and therefore according to that Rate they are charged to the King, on a Tenth granted by Convocation, (they are discharged of Tenths, &c. there) 17 H. 4. 33. But if an Abbot be seised of a Seigniorie, 20 Ed. 1. and after that Time the Tenancy escheats, as to that it is taxable among the Laity, but the Seigniorie was annexed to the Spirituality. Anno 20 Ed. 1. *quod vide*; and see 29 Ed. 3. 20. But if an Abbot was seised at that Time, and afterwards made a Lease at Will, or for Life or Years, the Lessee shall not pay the Fifteenth, for it is the Abbot's Land, 29 Ed. 3. *Quinzime* 1. also if the Abbot was seised of a Grange, Anno 20 Ed. 1. and afterwards Habitations are made there, and the Grange becomes a Town, they shall not pay to the Fifteenth, because the Abbot who is Lord pays Tenths with the Clergy for the same Land. 11 H. 4. 36. *per Thirn.* See Rot. Parl. 15 Ed.

3. Art. 25 & 32. Possessions of Churches purchased and appropriated, not taxed among other Temporalities in the Tax of Tenths, but charged with Fifteenths, &c.

See Rot. Parl. 20 Ed. 3. Art. 44. Religious Men who paid Tenths among the Clerks, and only paid them 20 Ed. 1. discharged of Fifteenths, for the Possessions of which they paid Tenths, and of the Lands whereof they did not pay Tenths being charged with Fifteenths.

See 11 H. 4. 37. *per Thirn.* If an Abbot had a Manor, Anno 20 Ed. 1. for which he was charged with Tenths, and afterwards aliens it: Now the Alienee shall pay to the Fifteenth; but if it comes to the Abbot again, he shall not pay to the Fifteenth assessed after it so returned; but if the Alinee was taxed to the Fifteenth before, and it afterwards comes to the Abbot, he may distrain for it, otherwise if the Abbot comes thereto by his Reversion. Rot. Parl. 1 R. 2. Nu. 152.

without,

Writts directed to make Proclamation, &c.

without, that all they which do cast and lay Annoyances, Dung, Garbages, Intrails or other Ordure in Ditches, Rivers, Waters and other Places within, about and near the divers Cities, Boroughs and Towns of our Realm of England and the Suburbs thereof, shall cause them wholly to be removed and carried away before the Feast of, &c. under the Penalty of twenty Pounds to be paid to us, and that the Mayors and Bailiffs of every such City, Borough and Town, and also the Bailiffs of Liberties, shall compel them to do this under the like Pain; and moreover that Proclamation shall be made as well in the said City of London as in other Cities, Boroughs, Towns and other Places abovenamed, that none of whatsoever Condition he be, cause to be cast or put from thenceforth any such Annoyance, Garbage, Dung, Intrails or any other Ordure in the Ditches, Rivers, Waters and Places abovesaid; and if any shall do this, he shall be called before the Chancellor by Writ at his Suit that will complain thereof, and if he be found Guilty, he shall be punished at the Discretion of the Chancellor, as in the Statute aforesaid is more fully contained; and now on the Behalf of our beloved in Christ the Prior and Friars of the Order of Hermits of Saint Augustin of the said Town of Newcastle upon Tyne, we understand, that many Men of the same Town have cast and laid Dung, Garbage, Intrails and other Ordures in a certain Way which leads near the Mansion of the aforesaid Prior and Friars in the same Town, to the Nuisance of them the said Prior and Friars and others conversant and passing there, and to the manifest Peril of the Town, and against the Form of the Statute aforesaid; We willing that Statute to be inviolably observed command you, strictly injoining that you make Proclamation in the said Town on our Behalf, that none, of whatsoever Condition he shall be, do cast or lay any Annoyances, Garbage, Dung, Intrails or Ordures whatsoever in the aforesaid Way, and that all and every one who shall cast or lay such Annoyances there, do remove and carry away the same without Delay, according to the Form of the Statute aforesaid. *Witness, &c.*

And it seemeth, that the Chancellor may award a *Pone* against him, or an Attachment, to make him come before him in the Chancery; and there punish him according to his Discretion. And it seemeth, that he who is grieved by that *Nuisance* may have an Action upon the Statute against him who did the *Nuisance*, and recover Damages for the *Nuisance* done to him; *tamen quare.*

But by the Common Law, if a Man doth any Thing to the Annoyance of my Freehold, or of my Land in which I have an Estate for Years, I shall have my Action upon the Case for the same, or a Writ of *Nuisance*, if it be Annoyance unto my Freehold.

Writ of Assise of Novel Disseisin.

A THE Writ of *Assise of Novel Disseisin* lieth where Tenant for Life, or Tenant in Fee-simple, or in Tail, is disseised of his Lands or Tenements, or put out thereof against his Will, that is a Disseisin; and he shall have an *Assise of Novel Disseisin* of that Ouster, &c.

B And the Rule in the Register is, That if a Man will bring (a) an *Assise of Novel Disseisin* of Lands in the County where the Common Pleas is; that then the Assise shall be brought in the Common Pleas; and if the Common Pleas be in one County, and the King's Bench in another County, if the Assise shall be brought of Lands in the County where the King's Bench is, then the Assise shall be brought and returnable in the King's Bench: And if both the Benches be in one County, the Usage is to bring the Assise in the Common Pleas or King's Bench at Pleasure; but that, as I think, is against the Rule in the Register.

C And the *Assise of Mortdauncestor* shall be brought in the like Manner, as the *Assise of Novel Disseisin* shall be, before the Justices of the Common Pleas or King's Bench; and in the Assise a Day certain shall be put, thus; *Usque in diem Jovis post Quindenam*, &c. But in *Assises of Mortdauncestor* the common Day shall be in *Quindenam*, &c. *vel in Octabis*, &c. as in other Pleas.

D And in an *Assise of Novel Disseisin* in the Common Pleas or in the King's Bench, the Justices may give Day out of Term, thus, *Usque ad diem Jovis proxime post Festum S. Lucie*, &c. because that the Assise hath not any Day of Return in the Term, but Day certain, which the Justices will give, and that may as well be out of Term as in Term. And by the Statute of (b) *Articuli super Chartas*, in every Writ of Summons and Attachment there ought to be fifteen Days betwixt the Date and the Return thereof; but in *Assise of Novel Disseisin* in the Common Pleas or in the King's Bench there needeth not be fifteen Days between the Date and Return thereof, as it seemeth by the Statute.

E And in an *Assise of Novel Disseisin* sued before Justices in Eyre, or before Justices of the King's Bench or Common Pleas, the Plaintiff ought not to

(a) See *Mag. Chart. c. 12*. That Recognitions of *Novel Disseisins*, and *de Mortdauncestor* shall not be taken but in the proper County. A Cryer of the Common Pleas for Life, the Court then held in *Com' S.* is disseised, and brings his Assise, then the Court is removed to *Westminster*; yet the Plea shall be continued in *C. B.* and the Assise shall be taken by *Nisi prius* in the County of *S.* where the Disseisin was. 7 *H. 4.* 45. 8 *Ed. 4.* 16. 19 *Aff.* 45. And although the Court be removed, and also the Office; yet the Assise ought to be brought, and the View made where the Disseisin commenced, and he may well enough recover the Seisin there.

8 *Ed. 4.* 10. 7 *Ed. 3.* 57. *Nich. Dagnworth's* Case. See *Dyer* 250. Judgment may be given in *C. B.* on a Verdict adjourned thither for Difficulty; and so on a foreign Issue where it is found over, &c. if the Plaintiff will release his Damages. See an Adjournment of an Assise from one County to another, without any Resummons. *Dyer* 375. L. 5 *Ed. 4.* 134. *Case de Com' Salop.* 22 *H. 6.* 11.

(b) It seems that the Statute *Articuli super Chartas* gives the Averment of not attached by fifteen Days. 10 *Aff.* 40. 12 *Aff.* 4. For before that Statute, Persons so attached were not to have the Summons of fifteen Days. *Bract. l. 4. c. 16, 182.*

See before 109. acc. in Attaint. Vide 7 *Aff.* 7. Br. Assise 120.

30 *Aff.* 44. B. Assise 116. for their Patent ought to be dated fifteen Days before the Day.

22 *Aff.* 9. 29 *Aff.* 40. Br. Assise 300.

Writ of Assise of Novel Disseisin.

have any Patent to the Justices, for they have Authority without a Patent; and so have Justices of Assise Authority to take *Assise of Novel Disseisin* without any Patent made unto them by the Statute of *Westm. 2. cap. 13.* but then the Form of the Writ is such:

The King to the Sberiff, &c. (a) A. hath complained unto us, that B. unjustly F and without Judgment hath disseised him of his Freehold in C. after the first (b) Passage of Lord King Henry, Son of King J. into Gascoigne; And therefore we command you, that if the aforesaid A. shall make you secure to prosecute his Claim, then cause that Tenement to be re-seized, and the Chattels which were taken in it, and the same Tenement with the Chattels to be in Peace until the first Assise, when our Justices shall come into those Parts, and in the mean time cause twelve free and lawful Men of that Venue to view that (c) Tenement and their Names to be put into the Writ, and summon them by good Summoners, that they be before the Justices aforesaid at the Assise aforesaid ready to make Recognizance thereupon, and put by Gages and (d) safe Pledges the aforesaid B. or (if he shall not be found) his Bailiff, that he may be then there to hear that Recognizance, &c. And have there the Summoners, the Names of the Pledges, and this Writ, &c.

Which proves that the Bailiff is Party quodammodo. Vide 7 Ass. 12. Br. Assise t 22.

And if the Writ of Assise be brought before other Justices than before the Justices of Assise in the same County, then the Writ shall be in another Form, which is such: *Rot. Parl. 25 Ed. 3. no. 35.*

The King to the Sberiff, &c. A. and B. his Wife, have complained unto us, H that C. unjustly, &c. hath (e) disseised them; or, the aforesaid B. of her Freehold in N. And therefore we command you, that if the said A. and B. shall make you secure, &c. in Peace until a certain Day, which our beloved and faithful R. and F. shall make known to you, and in the mean time, &c. and summon, &c. that they may be then before the aforesaid R. and F. and those whom we shall have associated unto them, at a certain Place which the same R. and F. shall make known to you, ready thereupon to make Recognizance. And put, &c.

(a) If the Writ be *Monstravit nobis*, it shall abate, 11 H. 6. 20. and so if *injuste & sine judicio* be omitted; so if the Writ comprises the Certainty of the Demand, *quare*.

(b) See *West. 1. cap. 38.* Yet it seems though those Words are not in the Writ, if it appears to the Court by the Plea, that the Disseisin was after that Time, the Writ is good. Note; It is a good Plea to say, that he was not disseised after the Time of Limitation. 13 H. 4. 16.

(c) Note; If it appears by Examination, that the Jurors have had a View of the Tenements of their own proper Notice, without the calling them thereto by the Sheriff, &c. it is well enough. *Dyer 61.*

(d) If any Stranger finds Pledges it suffices, for he shall be intended Bailiff, 8 H. 4. 6. and if the Bailiff returns *attached per plegios*, it is well, though it be not said, *quod Defendens non est inventus*, for it shall be intended. See 26 Ass. 33. 28 Ass. 40. and if the Defendant appears, it is sufficient tho' he was only summoned by fifteen

Days, and not attached by Pledges or Goods. 34 Ass. 1. and Note; four or more Defendants may find two Pledges in the County, 8 H. 4. 6. and *Ibid.* the Trial of the Attachment shall be by Oath of the Bailiffs; and *per Cur.* If the Defendant be returned *Nihil*, the Assise shall be taken by Default, without speaking with the Bailiff, 7 Ass. 12. and *Nihil habet* is a good Return in Assise, without saying *non est inventus*, for he may be attached by Pledges, 11 H. 6. 4. and see there *fol. 3.* though *Nihil* be returned, yet the Assise shall be awarded.

(e) A Writ brought by Baron and Feme, was *quod disseisivit eos*; where the Disseisin was before the Coverture, it shall abate by Plea of the Tenant; but if Not guilty be pleaded, and this Matter be found by Verdict, it shall not abate the Writ, 14 H. 6. 7 H. 7. 24. 4 Ass. 6. 24 Ed. 3. 50. and yet if a Feme disseiseth, and then takes Husband, the Writ shall be *quod Disseisiverunt*. 7 H. 7. 2. 4 Ed. 4. 17.

And

I And upon that Writ they ought to have a special Patent directed to the same Justices, because they are not the Justices of Assise of that County, and the Patent shall be such:

K (a) *The King to his beloved and faithful R. and F. greeting: Know ye, that we have constituted you our Justices, together with those whom we have associated unto you, to take the Assise of Novel Disseisin which A. and B. his Wife have arraigned before you by our Writ against C. of Tenements in N. And therefore we command you, that at a certain Day and Place which you shall appoint for this Purpose, you take that Assise, doing thereupon that which belongs to Justice, according to the Law and Custom of our Realm, saving to us the Amercements forth coming thereof: For we have commanded our Sheriff of Lincolnshire, that he cause to come before you that Assise at a certain Day and Place, whereof you shall give him Notice. In Witness whereof we have caused these our Letters to be made Patent. Witness, &c.*

[178.]

A And if the Writ aforesaid be directed to the Sheriff, and those who are assigned by the Writ to be Justices of that Assise, be the Justices of Assise in the same County, then it seemeth the Party needeth not to have a special Patent to them for that Assise; for their (b) general Patent to them to take all Assises shall be sufficient for that Assise and all other Assises: For the Justices of Assise use but to make one general Precept for all Assises according to their general Commission and Patent; and not to make a special Precept for every special Writ directed to the Sheriff, and especial Patent made unto them to take any special Assise for such Party.

29 Aff. 40.

B And if an Assise be brought in the Common Pleas or King's Bench, there the Form of the Writ is:

A. hath complained unto us, that B. unjustly, &c. (until) in Peace until Saturday in the Octave of Saint Michael next coming; or thus, until Saturday next after the Morrow of All Souls next coming, and in the mean time, &c. and summon, &c. that, &c. before us at W. or before our Justices at W. ready thereupon, &c.

C And in Assise when he purchaseth the Writ, he ought to find Sureties in the Chancery; and then the Form of the Writ is such:

The King, &c. A. hath complained unto us that, &c. unjustly, &c. disseised him of his Freehold in N. after the first Passage of Lord King Henry, Son of King J. into Gascoigne; and because the aforesaid A. hath made us secure to prosecute his Claim by C. and D. in your County, we command you, that you cause that Tenement to be reseized, &c. as above.

D And another Form of the Writ against a Body Corporate is thus (c):

A.

(a) *Note*; The Patent remains with the Plaintiff. 33 H. 6. *Assise* 460. The Justices may call the Jury, though the Party does not shew his Patent. For if he brings his Patent before the Assise ought to be awarded, it is Time enough. 3 H. 4. *Assise* 356. See 8 R. 2. *Assise* 368. 34 *Assise* 8.

(b) And yet see 5 Ed. 4. 133. a general Patent is sufficient for all Assises arraigned before the Patent, but for those arraigned after the general Patent, there ought to be a special Patent, *Quere.* 29 *Assise* 40.

(c) *Note*; An Assise of Rent lies against the Pernor only, or against all, or against the one, or the other. 9 Ed. 4. 11. But if an Assise brought against the Pernor and the Tenant, the Tertenant shall not plead in Bar. 12 H. 4. 21. *Assise* 1.

Note; An Assise of Rent-Service may be brought against the Tenant in Right, though he be not Tenant of the Land, as against the Mesne, 17 Ed. 3. 69. and in such Case, though he be disseised, 9 Ed. 3. 8. or if he makes a

33 Ed. 3. *A. hath complained to us, that B. Mayor of the City of C. and the Commonalty D*
 Brief 921. *of the same City, unjustly, &c. Or thus; A. hath complained unto us, that I.*
 22 H. 6. 24. *Abbot of the blessed Mary of York, and Friar P. of C. a Monk of the same*
 5 Ed. 2. *Abbot, and Friar I. of P. a Convert of the same House, unjustly, &c. Or thus;*
 Avowry 206. *C. Chaplain of the Chauntry in the Church of N. hath complained unto us, that*
 19 Ed. 3. *B. unjustly, &c.*
 Brief 468. *contra.*

3 Aff. pl. 13. If a Man have a Rent-service, or a Rent-charge, or Rent-seck, issuing out
 Prow. 86 b of Land for Life, in Tail or in Fee, if he be disseised of the Rent, he shall
 11 Ed. 2. have an Assise, and the Writ shall be general, *That unjustly, &c. he hath dis-*
 Garrancy 83 *seised him of his Freehold in N. and shall make his Title to the Rent.*

(a) And the Rule in the Register is, That when a Man is disseised of a
 Rent-charge or of a Rent-seck, it behoveth that all the Tenants of the Tene-
 ments charged be named (b) in the Writ of Assise, and all the Land put in
 View, although he were disseised but by one Tenant only, but it is otherwise
 of a Rent-service.

9 H. 5. 13. And in an Assise of *Novel Disseisin* a Man shall not vouch any one, unless E
 7 Ed. 6. 89. he be named in the Writ, and present when he is vouched, and would pre-
 13 Aff. 38. sently enter into the Warranty, and warrant the Land, &c.
 West. t. c. 31.

(c) But in an Assise of *Mortdauncestor* he may vouch at large. And a Man F
 1 Inst. 20. b. shall have an Assise of *Novel Disseisin* of an Office, if he have the same for
 35 H. 6. 7. Life; and the Writ shall be, *That he hath disseised him of his Freehold in D. and*
 3 Ed. 3. *he shall make his Complaint of the Office, and shew his Title in the Complaint.*

And so if a Man have any Profit granted unto him out of Land for Life,
 9 H. 4. 6. or in Fee, as to have the Fruit of Apples, Nuts, Acorns, or other Profits
 8 Ed. 4. 16. whatsoever, he shall have an Assise of them, if he be disseised of them, as
 22 H. 6. 4. whatsoever, he shall have an Assise of them, if he be disseised of them, as
 6 Aff. 12. appeareth by the Statute of *West. 2. cap. 25. (d).*
 Br. Assise 145.

And so of Toll, Tonnage, Passage, Pontage, Pannage, and other like. G
 31 Ed. 1. And if Tenant by Statute-merchant, or by (e) Statute-staple, be disseised of
 Aff. 440.

Gift in Tail, *contra* if he makes a Feoffment, which once was a Rent-Service.
 though the Feoffee does not give Notice, 3 Ed. 3. 21. See 33 Ed. 3. *Aff. 456.* the Pernor
 shall be named, else it shall abate. Note; In a *Præcipe* of Rent against *A.* who pleads that the
 Tenements put in View are three Acres, where-
 out the Rent is supposed to issue, and that one
B. holds a Mease not named, it is no Plea with-
 out saying that he is Pernor of the Rent; ad-
 judged 21 Ed. 3. 33. An Assise lies of Tithes
 against the Pernor, without naming the Tenant,
 for Tithes are not issuing out of the Land. *Dyer*
 84. See Sir *Nicholas Acton's* Case; if *A.* has a
 Rent, and *B.* levies the Rent, claiming the
 Rent, and it is not paid to *A.* *B.* is Pernor, and
 the Assise must be brought against him, and not
 only against the Tertenant, *per Fitzh.* But *Shard*
 denied it, and said, it could not be intended the
 same Rent. 30 *Aff. 5.* See it brought against
 the Pernor alone. 22 H. 6. 23.

(a) And so it is, though it be a Rent-seck,

(b) Although he be out of Court by his De-
 fault, 13 *Aff. 1.* and there be a Recovery in Va-
 lue, 16 *Aff. 19.* and he shall vouch or have Aid
 of him, who is named in the Writ only. 9 H.
 5 13.

(c) See the Notes at the End of this Writ of
 Assise of Offices, &c.

(d) And so of Estovers, &c. if the Tertenant
 cuts down the Wood, &c. 2 H. 4. 11. but the
 Statute does not extend to an Easement as a
 Way, &c. thereof an Assise does not lie. 34 *Aff.*
 14. See a Plaint of Estovers in Time of *R. 2.*
F. Grants 104.

(e) If the Tenant by Statute be ousted, the
 Tenant of the Freehold shall have an Assise, and
 also the Tenant by the Statute, and if the one
 recovers first, the Writ of the other shall abate.
 12 H. 6. 4.

any Lands which they have in Execution until their Debts be levied, they shall have an Assise of *Novel Disseisin*, and recover their Term; and yet they shall have but a Chattel, *scil'* the Land for the certain Term of Years, but that is by reason of Statutes thereof made.

And so he shall have an Assise, &c. of the Land which he hath in Execution by *Elegit*, if he be deforced thereof, by the Statute of *West* 2. *cap.* 18.

H (a) And by the Statute of *West*. 2. *cap.* 25. Assise is given, if one with his Cattle do eat the severall Pasture of another, the other may have an Assise of the Pasture, and waive the Possession, although the other do not claim the Freehold of the Land.

I And so if the Lord, or other Man who hath a Rent issuing out of the Lands, do often distrain for the Rent or Service where none is behind, the Tenant may have an Assise for this Distress by (b) the Common Law. And that Assise lieth between the Lord and the Tenant, or between the Lord Paramount and the Tenant Paravail, as appeareth 27 *Aff.* 51. But it seemeth reasonable, that the Tenant have the Assise of *Sovient foits* distrained against him who claimeth a Rent-charge out of Land; *tamen quere*. And if a Man sueth divers Assises against one Man in severall Towns, or against severall Men in severall Towns, he may sue forth a Patent to the Justices for all those Assises; and the Form of the Patent shall be such:

The King to his beloved, &c. greeting: Know ye, that we have constituted you, &c. to take the Assise of Novel Disseisin, &c. which, &c. of Tenements in N. and to take the Assise of Novel Disseisin which A. &c. before you by our other Writ against, &c. of Tenements. And so if there shall be more. [179.]

A If a Man be seised of Parcel of a Rent which is payable at a Day, and afterwards the Tenant will not pay the Residue of the same Rent which is due at the same Day, he who ought to have the Rent shall have an Assise of *Novel Disseisin* of the whole Rent, as well of that which he is seised of, as of the Residue, and that Seisin of Parcel of the Rent shall be to him a Seisin of the whole Rent. And if a (c) Man do distrain for his Rent pendent an Assise for the same Rent, he shall abate his Assise; but if he distrain for Homage pendent the Assise for Rent, which is Parcel of that Service, that shall not abate the Assise, for an Assise doth not lie of Homage.

(a) See by the Statute 32 *H.* 8. in an Assise for Tithes, the Writ shall be *de libero Tenemento*, and he shall make a special Plaint and Title therein. *Dyer* 83.

(b) See 28 *Aff.* 50. No Assise lies, for too often or excessive Distraining, or for distraining for Homage, Fealty or Suit. For, for these Duties no Distress can be excessive. 42 *Ed.* 3. 26. And in this Writ a Stranger being Tercenant may plead *Rien arrear*. See 27 *Aff.* 57. 28 *Aff.* 50. 20 *Ed.* 3. *Aff.* 33.

(c) But it is otherwise, if the Bailiff distrains

without his Commandment or Consent, 20 *Ed.* 2. *Aff.* 397. the Grantee of a Rent charge being seised, demanded the Rent on the Land, the Tenant not being there, it is not paid, he distrains, a Stranger without the Tenant's Assent, makes Rescous; an Assise on this being brought against the Tenant, it abated, because tho' Non payment be a Disseisin, yet when he is distrained afterwards the Disseisin is purged, and he shall have an Assise alone, but the Rescous, and the Rescussor ought to be named. 29 *Aff.* 52 and 59. *Vide Post.* K.

Quere, if
for frequent
Dittrels 28
Ass. 50.
Br. Ass. 29.
8 H. 6. 24.
34 H. 6. 46.
2 R. 2.
2 H. 4. 3.
3 Ed. 3. 74.
49 Ed. 3. 14.
15 Ass. 44.
49 Ass. 5.
Dyer 193.
7 Ass. 18.
Br. Ass. 127.
11 Ass. 13.
ibid. 168.
18 Ass. 4. 20.
per Cur. 14

And Seisin of Rent by an Abbot shall be a sufficient Seisin for the Successor to have Assise of the Rent, if he be denied the same, or Rescous made against him; but Seisin of Rent of the Father shall not be sufficient Seisin to the Son to have an Assise of the Rent, if Rescous be made unto him of the Rent; because that the Abbot hath the Rent in the Right of his House, which House continueth, and so the Seisin of the Predecessor is the Seisin of the Successor, but the Father hath the Rent in his own Right; and the Son shall have the same in his own Right; and then he ought to have a new Seisin. And a Man may have one Assise of several Rents, or of Land and Rent, and Officers and Profits appender in his Soil, and all in one Writ. (a) And the Lord Paramount may have Common appendant in the Lands of the Tenant Paravail to his Lands which he hath by Purchase; and the Tenant Paravail may improve against the Lord Paramount, as well as he may against other Commoner or Neighbour, if he leave him sufficient Common. *Quod vide M. 19 Ed. 3. t. Assise in the Abridgment (b).*

11 Ass. 30. 18 Ass. 4. 42, 43. 15 H. 7. 10. If there be sufficient at the Time of the Improvement, although not after, it is not material, Ass. 18.

2 Ed. 4. 5.
22 Ed. 4. 9.
14, 16.
12 Ed. 4. 5.
2 H. 6. 2.
8 H. 6. 17.
8 Ass. 16.
Assise 191.
21 H. 7. 35.
or 350.
44 Ed. 3. 23.
contr.
7 Ed. 4. 7.
12 Ed. 4. 9.
41 Ed. 3. 24.

And the Seisin of the Guardian shall give Seisin to the Ward to have an Assise, if he be disseised. And so of Tenant by Statute-merchant. And Seisin by the Hands of Tenant for Life of Lands out of which a Rent is issuing, is a sufficient Seisin to have an Assise of the Rent, if it be afterwards denied.

And so it seemeth (c) Payment of the Rent by the Tenant for Years of the Land is a sufficient Seisin to have an Assise of the Rent, if it be afterwards denied; *tamen quere.*

A Feme Covert shall not be a Disseisores of any Land, if she do not actually enter; nor shall she be a Disseisores by the Husband's Act. And an Infant shall not be a Disseisor by his Commandment. But a Man of full Age may be a Disseisor, if he command another to enter into Land.

16 Ass. 7. 35 Ass. 5. 8 H. 6. 14.

2 Ass. 3.
12 Ass. 87.
5 Ed. 4. 15.
34 Ass. pl. 12.
13 H. 7. 16.
40 Ed. 3. 21.
49 Ed. 3. 15.

(d) If a Man recover a Rent, the Sheriff may put him in Seisin by Wood, or by any Parcel of the Land out of which the Rent is issuing.

And Seisin of Rent by a Parson or a Chantry Priest, which they have in the Right of their Church, shall be a Seisin to their Successors to have an Assise of the Rent, if they be denied the same after the Death of their Predecessors, as well as of an Abbot, &c. *Quod vide 34 Ed. 3. Lib. Ass.*

(a) Also appendant to the Demesns of his Manor, 18 Ed. 3. *Admeasurement* 7. and accordingly adjudged, 18 Ed. 3. 42, 43. and see if the Tenant shall have a *Quo Jure* there.

(b) For he has not Common *ratione Domini*. Assise of Common see the next Writ *Post*.

(c) See Seisin of the Rent by the Hands of the Tenant at Will, pending the Writ, abates it, as agreed, 27 Ed. 3. 83.

(d) But if one has such a Return on an Award in Replevin, this is no Seisin of the Rent, for by the Judgment in the Avowry, he shall not recover any Rent, but only a Pledge; and therefore it is adjudged, that upon a Judgment by the Avowant for Rent, no *Seire facias* lies for the Arrears, for which the Avowry was made, and no others.

K A Man shall not be adjudged a Disseisor by the Act of his Tenant at Will: Although the Tenant at Will do Rescous for Rent, &c. he shall be adjudged the sole Disseisor and not the Tenant of the Freehold: But if the Tenant of the Land pay the Rent unto a Stranger who ought not to have the same, that Payment is a Disseisin to him who ought to have the Rent (a).

(a) See 16 *Aff.* 15. But 24 *Ed.* 3. 40. and 40 *Aff.* 19. seem *contra*. Vide B. *supra*.

Affise, where to be taken at large.

In Affise by an Infant, if the Deed of his Ancestor be pleaded against him, the Affise shall be taken at large, if the Deed bear Date in the same County; but if it bears Date in a Foreign County, the Affise shall be adjourned into Bank; and if it be taken at large, it is Error; for the Deed cannot be tried in another County. 21 *Ed.* 3. 20. 3 *H.* 4. 17, 18. See *contra* 26 *Aff.* 39. An Affise was awarded at large on a Divorce pleaded between the Plaintiff's Father and Mother. 30 *Aff.* 45. An Affise awarded at large on a Divorce between the Infant's Ancestors pleaded. 37 *Aff.* 5. So an Affise was awarded at large on pleading an Execution against an Infant upon a Recognizance by his Ancestor. 38 *Aff.* 5. But an Affise shall not be awarded at large, where a Fine or Recovery is pleaded against an Infant, without acknowledging the Possession to be in him. 24 *Ed.* 3. 64. 7 *H.* 4. *per Skreen*. If a Bar be pleaded against an Infant Plaintiff in an Affise, the Matter thereof shall be inquired, and also all those Things which may avoid the Infant's Title; but when the Defendant pleads to the Affise, it is sufficient, if the Verdict be given without inquiring into the Infant's Title, 12 *H.* 4. 22. adjudged; yet see there *per Hankf.* If an Infant pleads in Bar, and Title is made, the Infant shall answer to the Title, or else the Affise shall be awarded.

Affise, where to be in Right of Damages, and where to inquire of the Points of the Writ.

In an Affise the Tenant pleads, that the Plaintiff is a Nun professed, &c. and she is certified by the Bishop, no Nun professed, here the Affise shall be taken on the Seisin and Disseisin, and not in Right of Damages, for the Plea is to the Writ. 21 *Ed.* 3. 59. In *Mortdauncestor* the Tenant pleads a Release, if it be found against the Tenant, the Points of his Writ shall not be inquired, but only the Damages; but if he pleads to the Writ, or vouches, which is counterpleaded, there shall be an Inquiry of the Points of the Writ *de Mortdauncestor*, 39 *Aff.* 13. 17 *Ed.* 3. 28. accordant; but if a foreign Release be pleaded and denied, and at the Day in Bank,

the Tenant makes Default, the Affise shall be awarded *at large*, 22 *Ed.* 3. 4. and *ibid.* 12. an Affise awarded in Right of Damages on Failure of the Record, 24 *Ed.* 3. 61. an Affise awarded on a foreign Release pleaded, and Default of the Tenant at the Day in Bank. 30 *Ed.* 3. 12. If the Tenant pleads a Bar which does not confess the Outter, and the Bar is ruled insufficient, there Seisin and Disseisin shall be inquired, and therefore he may plead (or confess) an Outter at the Taking of the Affise, *per Tanf.* 22 *Ed.* 4. 39. and *per Hall* and *Gascoign*, it is usual to inquire of the Seisin and Disseisin in such a Case, but not to award (Damages.) 8 *H.* 4. 22. If in an Affise of Rent, the Tenant pleads *hors de son Fee*, and it be found against him, the Seisin and Disseisin shall not be inquired, 10 *Aff.* 24. and 10 *Aff.* 18. so if he pleads a Release of the Plaintiff, 8 *Aff.* 15. or other Deed, &c. 11 *Aff.* 26. and so if he pleads a Deed of the Plaintiff's Ancestor with Warranty, and the Plaintiff makes Title, which is found against the Tenant, 17 *Aff.* 18. and yet it seems clear, that if the Tenant acknowledges the Plaintiff's Seisin, and he counterpleads it, which is found against him on an Issue or Demurrer, the Affise shall be taken but in Right of Damages. 28 *Aff.* 21, 23. 40 *Aff.* 19. For he is a Disseisor by the Counterpleading, and he has confessed the Seisin; yet it seems it shall be inquired *Ex officio*, if he was a Disseisor with Force. See 13 *Ed.* 3. *Affise* 117. If Baron and Feme plead a Record in an Affise, and at the Day they make Default, now if the Plaintiff will release Damages, he shall have Judgment, but if the Baron makes Default, and the Feme is received, and pleads a Record, &c. and after makes Default, now the Affise shall be taken on the Seisin and Disseisin, 10 *H.* 4. 14. 11 *H.* 4. 51. 37 *Aff.* 1. adjudged, that if the Tenant pleads to the Writ, and the Plaintiff maintains his Writ with such a Plea as proves (alleges) a Disseisin in the Tenant, and the Tenant demurs thereto, the Affise shall be awarded in Right of Damages on the Disseisin confessed. 1 *H.* 6. 5.

Affise of Office, and Profit apprehender.

An Affise was brought in *Middlesex* of the Profits of the Office of Packing Wools, &c. within the Liberties of *London*, granted by the King, by *Norris v. Conibrook*; and it was agreed, 1.

That

That the Plaintiff in an Assise shall never abate for want of Form, and therefore, tho' the Course is in an Assise of Office or Corrody, or Common apprender, &c. to shew the Disseisin, and then the Title: yet if he shews the Title first, and then the Disseisin, it shall not abate. 9 *Ed.* 4. 6. But in those Cases where he makes Title in his Plaintiff (as regularly he ought to do in an Assise of Office, Corrody, &c. yet see *Raft. Entr.* 75. *Hors de son Fee* pleaded in Part of an Assise of Rent, 15 *Ed.* 4. 24. or of Land. 40 *Ed.* 3. 38.) There he ought to make his Plaintiff to pursue his Title, as if a Grant be made to have the Surveying and Packing of all Clothes which should go beyond Sea, he ought to shew, that those Clothes of which he was ousted the Surveying, were Clothes to go beyond Sea. 2. He who makes a Plaintiff in an Assise of Office, need not be so precise in setting out his Title, as if he was to sue against the King by Petition; for one need not make so exact a Title against Pernors of Profits as against a Tenant, and therefore he need not shew who had the Office before, or that it was an ancient Office, 9 *Ed.* 4. 11. and yet if it was not an ancient Office, it ought to be created and granted by the Words *Constitutimus*, &c. 8 *Ed.* 4. 6. If one makes a Plaintiff of an Office, he need not shew that it is an Office of Profit, or that Fees belong thereto, 8 *Ed.* 4. 22. and yet if it be only an Office of Charge, an Assise does not lie thereof, 27 *H.* 8. 38. but if he be ousted by a Pernor, he has his Remedy by some original Writ, according to his Case, and so it is in Case of a Corrody. 17 *Ed.* 2. *Nuper obiit* 12. in the Case of *Const.* 27 *H.* 8. 12. 4 *Ed.* 3. *Brief* 736, 793, 794.

Assise, how it is to be brought of an Office.

1. If he be ousted of the Office, then the Assise shall be brought of the Office, *cum pertinentiis*; for if his Plaintiff be of the Office, and of the Profits thereof, he makes his claim of one Thing twice, and therefore his Plaintiff shall abate, 8 *Ed.* 4. 22. agreed; and so is 30 *Aff.* 4. for the Office of Meter. 2. If one be ousted of Parcel of the Profits of his Office, this may be alledged to be an ouster of the whole Office, if the Party will. 5 *Ed.* 4. 8. *per Cur.* But if he will, he may make his Plaintiff only of the Profits of his Office, and if he be ousted of Parcel of the Profits, he may have an Assise of those Profits: So if one has a Corrody *de pane & cervisia*, if he be ousted of only Part of the Bread, &c. he shall have an Assise of the whole Quantity of Bread for the Necessity, but he need not bring an Assise of his Corrody, 22 *H.* 6. 10. 3 *Ed.* 3.

Aff. 175. 13 *Ed.* 3. *Plaint* 23. 11 *Aff.* 22. 30 *Aff.* 4. and so *Note* a Diversity between a Thing severable and entire. If *A.* grants a Rent of twenty Pounds out of twenty Acres, in twenty several Counties, a Denial of Part of the Rent is a Disseisin of the whole, and the Assise shall be brought *in consinio comitatus*. But if *A.* grants Estovers in two several Woods, and the Grantee be disturbed in one Wood, he shall not have an Assise of that only. 22 *H.* 6. 10, 11. 3. If an Office extends into divers Towns, Hundreds, or Counties, it is an Office for which an Assise lies of the Profits, by the Stat. *West.* 2. where *Note*; If an Office extends into divers Villis or Counties, &c. an Assise lies for the Profits in any Vill or Hamlet, where the Grantee is ousted, for the Profits are Things severable. If one be Sheriff, or Bailiff of an Hundred, or Manor for Life, if he be ousted of the Office, he may have a Writ or Plaintiff within the Sheriffalty or Bailiwick of such County, City, Hundred, or Manor, without shewing in which of the Villis, because well known. But if it be for the Bedelry of an Honour, &c. there he ought to bring his Writ in all the Villis, where the Office extends. Also in the former Case, the Hundred, or County, (City) shall be put in View; see these Books. 16 *Ed.* 2. *Aff.* 370. 18 *Ed.* 2. *Aff.* 377. 8 *Ed.* 3. 56.

If the King grants 6 *d.* on each Sack of Wool, within the County of *York*, the Grantee shall have an Assise of the Profits in any particular Place within the County, where he is disturbed. But if he brings an Assise of the Office, the whole County shall be put in View, as in the principal Case *supra* was held, seeing the Office there extended into divers Counties. (For it was averred to be within the Liberties of *London*, &c.) therefore the Assise for the Office should be brought *in Consinio Comitatus*, but for the Profits, it may be brought in any Vill or Place where the Disseisin is; but then how shall it be in case the Office extends throughout *England*, and it seems to me most reasonable, that the Office should be severable, because it does not charge the Land, but only respects the Person; and therefore he may also have an Assise of his Office in whatever Place he is disseised; as suppose he disseised him of his Office of Measurer in such a Town, &c. See there the Case of the Usher of the Exchequer. 22 *H.* 6. 10, 11. *Et postea partes concordaverunt*. See an Assise of the Office of *Filacer*, and the Post put in View, *Dyer* 114. *Jaux's* Case; and if it be an Office concerning Land, it seems he ought to name the Tenant of the Soil. 8 *Ed.* 1. *Aff.* 235.

Writ of Common of Pasture, Turbary or Piscary.

L THE Writ of Assise of (a) *Novel Disseisin*, of Common of Pasture, or of Turbary, or of Piscary, lieth where a Man hath Common of Pasture appendant or appurtenant to his Manor or House, or Land which he hath for Term of Life, or in Fee-simple, or in Fee-tail; if he be disturbed of his Common, so that he cannot take it as he ought to do, he shall have an Assise of *Novel Disseisin* thereof; and the Writ shall be such:

(b) *The King to the Sheriff, &c. A. hath complained unto us, that B. unjustly, &c. hath disseised him of his Common of Pasture in N. which belongs to his Freehold in the same Town, or in another Town, after the first Passage of, &c. (as in an Assise of Land): And therefore we command you, that if the said A. shall make you secure, &c. then cause twelve free and lawful Men of that Neighbourhood to view that Pasture and the Tenement, and their Names to be put in the Writ, and summon, &c. before our Justices, &c. or before us, &c. on Thursday next after the Morrow of the Octave, &c. or thus, before our Justices at the first Assise when they shall come into those Parts; or thus, before our beloved and faithful R. and F. and those whom, &c. (as above).*

11 H. 6. 22.
The Writ was
de libero Tenemento, and his
Plaint of Com-
mon of Pa-
sture, for
which the
Writ abated.

And if the Common of Pasture, or Turbary or Piscary be not appendant or appurtenant to any Manor, nor Land nor Tenement, then these Words in the Writ, *which belong to his Frank-tenement*, shall be left out in the Writ; and then the Writ shall be such:

The King, &c. A. hath complained unto us, that B. unjustly, &c. hath disseised him of his Common of Pasture in N. after the first Passage, &c. (until) of that Neighbourhood to view that Pasture, and their Names to be put in the Writ, &c. As in the Writ of Assise of Land.

And the Patent made unto the Justices of the Assise of Common is as the Patent made to the Justices of Assise of Land; but where it is said in the Patent of Assise of Land in that Place, *Of his Freehold, &c.* he shall say in this Patent, *Of his Common of Pasture in N. &c.*

11 H. 6. 22.
per Paston.

(a) See 2 H. 4. *per Markham*, if the Tenant ploughs the Land, wherein I have Common, I shall have an Assise, and not a Writ on the Case. See 4 Ed. 2. *Aff.* 449. that an Assise of Common does not lie without naming the Tenant of the Soil.

(b) Here *Note*, That an Assise *de Libero Tenemento* does not lie of Common, for it is no Tenement, and therefore by a Grant of all Lands and Tenements, it is held by some, that

Common in gros does not pass. And yet a Writ of Dower lies thereof, and he shall make his Demand of Common. 11 H. 6. 22. And *Note*; In an Assise of Common it is not necessary to make Title in the Plaint, but the other may demand what he has of Common there, 36 *Aff.* 3. the other pleads *hors de son Fee, &c.* 11 H. 6. 27. See in an Assise for Common appendant, you need not prescribe. 22 H. 6. 10.

[180.]

(a) And if a Man have Common appendant or appurtenant to his Freehold A which is in his Manor or Land, which is in several Counties, and he is disseised of his Common, then he shall have an Assise in the County where the Common is, and another Writ in the County where the Land is, to which the Common is appendant or appurtenant. And if the Land or Common be in one County, and the Land to which the Common is, be in another County, yet the Writ shall be brought in the County where the Land of which the Common is issuing, is, and another Writ in the County where the Land to which the Common is appendant, is. And if the Land be in one County to which the Common is appendant, and the Common be in several Counties, then he shall have several Writs, in the County where the Common is, and where the Land is; and the Forms of the Writs are such:

A. hath complained unto us, that B. unjustly and without Judgment hath disseised him of his Common of Pasture in N. which belongs to his Freehold in R. and K. which are in the Confinnes of your County and the County of Lincoln, after the first Passage, &c. Or thus; Of his Common of Pasture in N. in your County and the County of Lincoln, which belongs to his Freehold in K. in the County of, &c. Or thus; Of his Common of Pasture in R. and K. which are in the Confinnes of your County and the County of Lincoln, which belongs to his Freehold in K. in the said County of Lincoln in the same Confinnes, &c.

And upon these Writs he may have a Patent directed to certain Persons who shall do Justice in that Assise upon all the Writs.

The King to his beloved, &c. Know ye, that we have constituted you our Justices, together with those whom we have associated unto you, to take the Assise of Novel Disseisin which A. hath arraigned before you by our Writs against B. of Common of Pasture in R. and K. which are in the Confinnes of the Counties of N. and L. Therefore we command you, that at a certain Day and Place in the Confinnes of the County aforesaid, or in the Confinnes aforesaid, which you shall appoint for this Purpose to take that Assise, &c. For we have commanded the Sheriff of the County aforesaid, that at a certain Day and Place in the Confinnes of the County aforesaid, or in the County aforesaid, whereof you shall give him Notice, he cause that Assise, &c.

5 Ed. 4. 2.
Post. 187.

21 H. 6. 9. 10.

7 H. 4. 30.

5 Ed. 3. 2. ac.

10 Ass. 5.

Br. Assise 151.

45 Ed. 3. 12.

15 Ed. 4. 32.

Ryot.

6 H. 7. 14.

11 H. 6. 12.

but for those

And in like manner he may sue several Writs of Assise of Common of Turbary, or of Piscary, or other like Profits which are in two Counties. And when a Man hath a Rent which is issuing out of Land in two Counties, if he be disseised thereof he shall have an Assise as before is said of Common, viz. two Writs, one Patent, as before is said, by the Stat. 7 R. 2. cap. 10. (b).

(c) And a Man cannot use his Common appendant with the Cattle of Strangers, unless he bring them to soil his Land: But he cannot agist other Cattle there for Money, which do not manure his Land. 6 H. 7. 4. 45 Ed. 3. 25.

15 Ed. 4. 32. The same Law where a Man hath Common as an Inhabitant, he shall have it which are levant and couchant within that Town.

(a) See a Commission to inquire if A. has Common in one County appendant to Land in another County, and a Bridge is between the Land and the Common, which ought to be repaired by one, and the Bridge is broken, so that A. cannot use his Common, he shall have an Assise where the Bridge is, and not where the Common is. 7 H. 4. 8.

(b) But it was otherwise at Common Law. 18 Ed. 3. 32.

(c) See these Diversities agreed in *Strode's Case*, 11 H. 6. 22. 14 H. 6. 6. and see the *Case of Rumjey and Rawson*, Raym. 171. Mod. 18. 25.

And

And if a Man grant Common unto one for his own Cattle, he cannot use his Common with the Cattle of a Stranger.

A Man presumed to have Common appendant for all manner of Beasts, and it was holden it could not be Common appendant, for that the same is not but for those Cattle which manure his Lands. 9 Ed. 4. 3. 37 H. 6. 34. and 14 H. 6. 6. But it is Common appurtenant. Old N. B. 26.

And so if a Man prescribe to have Common for his own Cattle, he cannot use Common with other Cattle.

But if a Man (a) claim Common for Cattle without Number, or to have Common for twenty Cattle, there he may agist the Cattle of Strangers for Money in that Common.

14 H. 8. 2. If a Man hath Common sans Number

granted, yet the Tenant shall have Common for his Cattle. 11 H. 6. 22.

C (b) And a Man may claim Common appendant *ratione Messuagii*, but it seemeth it shall be taken that he hath Land lying to his House, &c. which the Cattle ought to foil, &c. *Quære*.

22 H. 6. 42. 27 H. 6. 34. Admittitur. But Prifot, It

cannot be but to arable, 20 H. 6. 4 Hulls acc. 5 Ass. 2. It cannot be but to ancient Land of that, and not to Land improved, 10 Ed. 2. acc. and there the Land to which it may be appendant, is called Aid and Gain.

D (c) None shall claim Common by Vicinage but the Lord who hath the Possession of the Town, 23 H. 6. But yet it seemeth, that one Neighbour may claim Common by Vicinage in the Land of another Neighbour, although he be Lord of the Town, &c. And so if a Man claim Common in certain Lands so long as he dwelleth in such a Town to such a House, or if he claim Common in the Land until the Lands be sowed, and after the Corn is cut, to have Common there again.

7 Ed. 4. 26. 32 H. 8. Dyer 47. 37 H. 6. 34. ac.

F (d) And if a Man be disseised of the Common appendant or appurtenant to his Land, and afterwards he maketh a Feoffment of the Land to which the Common is appendant or appurtenant, he shall not have Assise of that Common nor other Remedy.

10 H. 6. 73. So if he be disseised of the Land, he shall not have Common till his Entry. 5 H. 7. 7. 29 H. 8. 4. 7 Ed. 4. 27.

(a) See accordant 11 H. 6. 22. and therefore such Common is grantable over. See 27 H. 8. 20. that it may be granted to two. 22 H. 6. 22. 36 Ass. 3.

(b) See 22 H. 6. 44. and 11 Ed. 3. Common 11. one claims Common as appendant to his Manor, and issue joined thereupon, where it is said, that if one has Common appendant to his Carve of Land, whereon he has a House, this shall not be said appendant to the House, but to the Land: and *Note* there a special Prescription.

(c) *Note*; The Lord may have in the Land of his Tenant Common appendant to his own Demefns, *per Green*. 18 Ed. 3. *Admeasurement* 7.

(d) See 4 Ed. 3. 45. In a *Quod permittat*, of the Seisin of his Grandfather. *Note*; If one grants Common, and does not shew in what Place it is to be taken, the Grant is Void, *per Passon*; if he grants Common throughout his

Manor for his Beasts, he shall not have it in his Garden, nor in his Land sown, nor for Beasts not commonable; *per Babb*. If one grants Common in his Land, *quandocunque Aueria sua ierint*, he shall not have Common; but when the Grantor's Beasts are there also; but if one grants Common to *I. S. ubicunque Aueria sua ierint*, he shall have Common, but in the Places where the Grantor's Beasts do go; and therefore if he justifies for such Common, he ought to shew that the Beasts went there. 2. If the Beasts of the Grantor once went there, although he never had any Beasts there afterwards, yet the Grantee shall have the Common. 9 H. 6. 36. See 11 Ed. 3. Common 10. A. grants Common to B. *in omnibus pasturis suis*, to go there with his own Beasts; *Quære*, if he has Common, though the Beasts of the Grantor are not there: it seems not.

If a Man grant certain Lands to one *cum Communia in omnibus terris suis*, &c. and doth not exprefs any Place certain, he fhall have Common in all his Lands which he had at the Time of the Grant.

And if a Man have Common of Estovers by Grant, he cannot build new Houfes to have Common of Estovers for thofe Houfes.

14 H. 6. 6. The Ufer of Common by Tenants at Will, fhall be a Seifin to him in the Reverfion to have an Affife, if he or his Tenant at Will, be after difturbed to ufe the Common.

11 H. 6. 22. And P. 45 Ed. 3. it appeareth, that he who hath Common granted unto him by Specialty, cannot agift other Men's (a) Cattle in the Common, but 11 H. 7. 7. ought for to ufe the Common with his own Cattle, or fuch Cattle which he hath to occupy his Land with, &c. or may manure his Lands with Cows which he alloweth to have the keeping for their Manure: But Thorpe faid, 32 Aff. 82. that if a Man grant to me Common for my Cattle, that I may take other Thorpe. Beafths to give me Seifin in my Common, and prefently drive them off again, 7 Aff. Br. if he who granteth the Common do agree thereunto. And in Affife of Com- Affife 121. mon, all the Tenants of the Land out of which the Common is, ought to be named, &c. as in Affife of a Rent-charge.

If a Man have an Affife of Common, and pendent the Writ, he ufeth the Common, the Writ fhall abate, but if the Cattle efcape into the Land, it fhall not abate the Writ although they feed there.

(b) And it is to know, Common appurtenant to a Manor may be for Cattle without Number, or to a certain Number, and may be appurtenant to a Manor by Prefcription or by Grant made fince Time of Memory, and that [181.] as well for Cattle certain, as without Number. As if at this Day a Man 26 H. 8. 4. granteth to one Common of Estovers, or of Turbary in Fee-fimple to burn in his Manor, by that Grant it is (c) appurtenant to the Manor, and if he Plow. Com. 381. ac. 5. make a Feoffment of the Manor, the Common fhall pafs to the Feoffee. Aff. 9. And fo if he grant to a Man and his Heirs Common, as appurtenant to his Manor of F. to common in fuch a Moor, &c. Now by that Grant the Grantee fhall have the Common appurtenant to his Manor, and if he make a Feoffment in Fee, or for Life of the Manor, the Feoffee or Lefsee fhall have the Common. As if an Abbot with the Affent of his Convent, grant to another and his Heirs, to find a Chaplain to fing in his Chapel in his Manor of D. if he make a Feoffment of the Manor, the Feoffee fhall have an Action of Covenant againft the Abbot and his Succelfors by that Grant, as it 2 H. 4. 6. appeareth. 10 H. 7. 13. 16 H. 7. 9. 42 Ed. 3. 3. M. 2 H. 4. 6. T. Covenant, and H. 42 Ed. 3.

(a) Or fuch Beafths as he had; fee accordant 11 H. 6. 11.

(b) Common appendant for all Manner of Beafths, 14 H. 6. 6. is not appendant, but appurtenant, if it be for Beafths not commonable 25 Aff. 8.

(c) See 7 Ed. 3. 48. If one grants to I. S. eight Acres of Land, *fmul cum* fo much Common as belongs to his Oxgang of Land in a cer-

tain Place, this is not Common appurtenant, but in grofs; *per Herle*; but fee there it is adjudged, if one grants an Affart *fmul cum tota Communia quanti pertinet ad unam Bovatam Terræ*, adjudged this is Common in grofs, and he fhall take as much as another takes for two Bovates or Oxgangs in grofs, and when he pleafes. *Ratio*, for fuch Common cannot be appendant to Land.

Writ of Certificate upon Assise sued.

- A** **T**HE Writ of *Certificate* lieth in divers Manners; one is where the Defendant appeareth by (a) Bail, and pleads to the Assise where his Master hath a Release to plead, or other Matter in Writing, of which the Jury cannot have Notice; then if the Assise pass against the Bailiff, the Master shall have a Writ of Certificate upon that Writing, and thereupon he shall cause the Assise to return, and be sworn to try that Deed, &c. as shall be more fully after shewed.
- B** (b) And there is another Manner of Certificate, when the Verdict is not well examined by the Justices when they take the Verdict, or when they have not well examined, or fully enquired of the Issue joined, &c.
- C** (c) And the Certificate ought to be sued in the same County where the Assise was sued, and may be sued before the same Justices before whom the Assise passed, or before other Justices. And if the King's Bench or Common Pleas be in the same County where the Assise passed, then the Certificate may be sued in the King's Bench or Common Pleas, if they be in the same County where the Assise passed.
- And that Certificate shall be a Writ directed to the Sheriff, and the Justices shall have a Patent made to them as they shall have in Assise, &c. And the Form of the Patent made to the Justices shall be such:
- D** *The King to his beloved and faithful A. B. and C. greeting: Because certain Doubts are arisen upon some Articles touching the Assise of Novel Disseisin which was summoned between A. and B. and taken before you the aforesaid B. and our beloved and faithful I. at N. by our Writ, as from the Complaint of him the said A. we have received Information, we have constituted you our Justices, together with those whom we have associated unto you, to take the Certificate thereupon: And therefore we command you, that at a certain Day and Place which you shall appoint for this Purpose, you take that Certificate, doing thereupon that which to Justice belongs, saving to us the Amercements, &c. We have also commanded our Sheriff, &c. that at a certain Day and Place which you shall give him Notice of, he cause to come before you the Jury of that Assise, to certify you upon the Articles aforesaid, &c. In Witness whereof we have caused these our Letters to be made Patents. Witness, &c.*

As a Fine or Recovery.
8 Ed. 3. Br. Assise 426.
4 H. 4. 5.

Plow. 92. a.

21 Ed. 3. 3.
Br. Assise 63.
Vi. 32 Ass. 1
One shall have a Certificate upon a Defeasance.

12 H. 4. 10.
41 Ass. 5.
Certificate was at the Common Law before Judgment
Vi. 8 Ed. 3.
Fitz. Assise 412. Plow. Com. 92.

(a) *Note*; After the Assise awarded in this Plea by the Bail, the Tenant may appear in Person, and plead such a Plea, as thereon he may have a Certificate of the Assise being taken, &c. 11 Ass. 3. 8 Ass. 17. 10 Ass. 24. 12 Ass. 37. 20 Ass. 1. And so he may after the Assise awarded by Default. 20 H. 6. 29. 9 H. 7. 24.

(b) And it seems that so long as the Assise depends in Adjournment, this Execution may be made either without Writ, as 34 Ass. 1. or by Writ, as 34 Ass. 5.

(c) But if they remove it, then it shall not be taken there, but in the County by *Nisi prius*. 7 H. 4. 45.

(a) And

Writ of Certificate upon Assise sued.

(a) And the Form of the Writ of Certificate is such :

E

The King to the Sheriff, &c. Because certain Doubts are arisen upon some Articles touching the Assise of Novel Disseisin which by our Writs was summoned between A. and B. and taken before our beloved and faithful H. and R. at N. of Tenements in I. as from the Complaint of him the said A. we have received Information, we have constituted the aforesaid H. and R. or thus, the aforesaid H. and our beloved L. or thus, our beloved and faithful N. and S. our Justices, together with those whom we have associated unto him, to take the Certificate thereupon: And therefore we command you, that at a certain Day and Place whereof the aforesaid N. and S. shall give you Notice, (b) you cause to come before them the Jury of that Assise, to certify them upon the Articles aforesaid, and summon, &c. the aforesaid B. that, &c. before, &c. to hear that Certificate: And have there the Names of the Jury and this Writ.

And that Writ lieth properly where the Verdict is not well examined. But if he appeareth by Bailiff to the Assise, and plead *Nul tort, &c.* and it is found against him where his Master hath a Release to plead, and doth not plead it; then his Master shall have another Form of Writ upon the Statute of *West. 2. cap. 15.* and the Writ shall be such :

The King to his beloved and faithful I. and his Companions Justices, &c. Whereas in the Statute set forth at Westminster it is contained, That if the Defendant against whom the Assise passed in his Absence, shew any Deeds or Releases, upon the making whereof the Jury were not examined, nor could be examined, because there was no Mention made of them in pleading, and probably might be ignorant of the making of those Writings, the Justices upon the Sight of those Writings shall cause the Party to be warned that recovered, that he appear at a certain Day, and shall cause the Jurors of the same Assise to come, and if he shall verify those Writings to be true by the Verdict of the Jurors, or by Inrcment, he that purchased the Assise contrary to his own Deed, shall be punished by a certain Penalty contained in the said Statute. And we have received Information from the Complaint of E. that I. lately arraigned a certain Assise of Novel Disseisin by our Writ against the aforesaid E. and others, &c. of Tenements in S. which said Assise hath passed in the Absence of him the said E. and others, as it is said, and he the said E. hath a certain Writing of Release of the aforesaid I. of the Tenements aforesaid, upon the making whereof the Jurors were not examined, nor could be examined, because there was no Mention made thereof in pleading: We command you, that having seen the said Writing you cause to be done to him the said E. due, speedy and compleat Justice in the Premisses, according to the Form of the Statute aforesaid. Witnesses, &c.

[182.]

(a) See *Rot. pat. 1 Ed. 1. M. 3. and M. 34. in Dorso. Si forte Assisa illa super quibusdam Articulis illam contingentibus minus plene Examinata fuerit vos eam plenius Examinetis.*

(b) This was the Writ which lay at Common Law, and was always brought before Judgment, and was always a Perfecting of the Verdict, so that it shall be said one and the same Verdict; and therefore, if any of the Jurors therein had

died after the Verdict, the Certificate thereon could not be taken by the Residue with others; for the Assise was always pending, and therefore in that Case the Examination fails; but it is otherwise it seems in a Certificate on the Statute. See *12 H. 7. 9. and 43 Ass. 5.* a Certificate after Verdict and before Judgment, on a Deed not given in Evidence before, where the Defendant an Infant pleads in Person.

And

And that Writ is as a Patent made to those Justices, and upon that they award a Certificate to the Sheriff, to warn the Party to cause the Jurors in Assise to come before them. And that Patent or Commission is commonly made to other Justices, as unto the Justice before whom the Assise passed, and the same appeareth by the Words of the Patent or Commission.

A (a) But by the Statute of *West. 2. cap. 25.* appeareth, that if the Bailiff of the Defendant do alledge a Record in Bar of the Assise, the Justices may take the Assise notwithstanding that Plea of the Bailiff, and give Judgment upon the Verdict, &c. But then the Defendant in the Assise may come to the Justices, and shew that he hath Matter of Record to bar the Plaintiff in the Assise, &c. That at another Time he barred the Plaintiff in the like Assise, brought by him against the Defendant; or that there is a Writ of higher Nature depending between them for those Lands; and then he ought to sue forth a Writ to cause the Record to be brought before the Justices before whom the Assise passed; and thereupon, when the Record cometh before them, if they perceive that the Record shall be a Bar in the Assise, then the said Justices shall award a special Writ of *Scire facias* out of the Record of the Assise, to warn the Party to be before them, &c. and if he cannot deny it, nor avoid it, then the Defendant shall recover his Seisin again, and double Damages, and the Plaintiff in the Assise shall be imprisoned at the Discretion of the Justices. And if the Defendant in the same have not any Record to shew, (b) but a Release, or other Matter in Writing, which might bar the Plaintiff who recovered in the Assise; then if the Defendant shew those Writings to the Justices before whom the Assise was taken, the Justices thereupon may award a special Writ of Certificate directed to the Sheriff, that he summon in the Party, and that he cause the (c) Jurors in the first Assise, &c. to try that Matter, &c. And if it be found for the Defendant, then the Plaintiff who recovered by the Assise, &c. shall lose double Damages, and shall be also imprisoned at the Discretion of the Justices, as appeareth by the said Statute.

B But whether the Defendant shall sue a special Patent to the same Justices to proceed as the Writ aforesaid is, or that they shall proceed and award a special Certificate upon the Matter in Writing shewed them by the Defendant, hath been a Question, because by the Judgment in the Assise, and Execution awarded, their Authority by Commission is determined, as some say. But I conceive, that the Statute is a Commission and Patent sufficient to give Au-

(a) See 12 H. 4. 9. After Judgment given for the Plaintiff in Assise upon the Death of the Justices, a *Certiorari* issued out of Chancery to the Executors of the Justices, to send the Record into Chancery, and from thence a *Mittimus* is sent to the Justices of Assise in the County, with a Writ reciting the Statute.

(b) *Quære*, if he shew a Release bearing Date in a foreign County, to what Purpose or Intent shall the Assise return (it.) 12 H. 4. 9.

(c) It seems *per Cur'*, that the Party shall not

have his Challenge to those Jurors in the Certificate; *quære*, if it be a Matter happening *ex post facto*, as Attaint of the Jurors, &c. Yet it seems, if others are joined with the Jury, as where any of them die, &c. he shall have his Challenge, *per Hull*, although the Jury came the first Day in the Certificate; yet if they make Default, the Parties shall plead notwithstanding. And *Note*; If the Deed may be proved by Record, then the Inquest is not to the Purpose. See 12 H. 4. 9.

Writ of Certificate upon Assise sued.

thority to them to award a special Certificate to warn the Party, and to cause the Jurors of the Assise to appear before them upon the Matter in Writing shewed unto them, although Judgment be given in the Assise, and Execution be past; for if there be such Matter, then their Authority remaineth to punish the Plaintiff for his Suit, and to restore the Defendant again unto his Possession, by Virtue of the Statute, as I conceive.

And if a Man loseth in an Assise by Default, where he pleadeth by Bailiff, C where he hath Matter in Writing not shewed to the Jurors, he may sue a Certificate upon that Matter before the Justices at the next Assise following, or before the Justice of Assise, or before the Justices of the King's Bench, or before the Justices of the Common Pleas; and the Form of the Writ is such:

The King to the Sheriff, &c. Because, &c. (as above, until) We command you that you cause the Jurors of that Assise to come before our Justices at the first Assise, when they shall come into those Parts, to certify them upon the Articles aforesaid, and summon, &c. the aforesaid B. that he be at the said Assise before the Justices aforesaid to hear that Certificate.

And if the Certificate be sued before the Justices of the Common Pleas, then the Writ is such:

The King to the Sheriff, &c. Because, &c. as we have received Information; We command you, that you cause the Jurors of that Assise to come before our Justices at Westminster (such a Day) to certify them, &c. (as above).

And if the Certificate be sued before the King, then the Writ is as above:

We command you, that you cause the Jurors of that Assise to come, &c. before us at E. on Saturday, &c. to certify us, &c.

If a Man in Assise brought against him pleadeth a Release, or other Matter D in Writing, in Bar of the Assise, and the Plaintiff doth deny the same, by reason whereof the same doth remain in the Keeping of the Chief Justice of the Assise; and afterwards a new Commission is made to the Chief Justice and to other Persons, to take all Assises which remain to be taken in that County, for which Cause they award a Re-attachment against the Defendant, and a Re-summmons against the Jurors; the Defendant may come and plead the Release or Writing which is in the Keeping of the Chief Justice, which was denied, &c. And thereupon the Chief Justice shall have Day until the next Assises to bring in the Writing; and if before the next Assises the King's Bench be removed to that County, and that Record of the Assises is come into the same Court, and the Defendant is re-attached, and appeareth not, but maketh Default, for which the Assise passeth for the Plaintiff, &c. and that Release not pleaded nor shewed, the Defendant shall have a special Writ to the said Justice in whose Custody the Release or Writing is, to send the same into the King's Bench, and thereupon the Defendant shall have his Certificate out of the King's Bench against the Plaintiff upon that Matter; and such Writ is in the Register.

[183.] If a Man sue a Certificate, he may have a Writ of Association upon that A Writ, as in Assise of *Novel Disseisin*, and also a Writ of *Si non omnes*, as well as he shall have in Assise of *Novel Disseisin*.

And

- B** And a Man may sue the Certificate before the same Justices (a) before whom the Assise passed, and then the Certificate shall issue out of the Rolls of the same Justices: But he may sue his Certificate before other Justices, if he will, and then the Writ and Patent shall issue out of the Chancery.
- C** And if some of the Jurors be dead, yet it seemeth reasonable that he have the Certificate; and that it be tried by those who are alive, and by others, &c. for that is a new Matter upon which they were not charged before; but see that Matter debated 32 Ed. 3. Lib. Aff. and 12 H. 4. 4. 7 H. 4. 45.
- D** Anno 43 Ed. 3. It appeareth that a Man shall have a Certificate before Judgment given in the Assise, as well as after Judgment given; and this is at Common Law. 43 Aff. 5
- E** And a Man shall have a Certificate upon an Assise of Darrein Presentment, 12 H. 4. 9. or an Assise of Mortdauncestor, or Juris utrum; and it is Reason that a Man West. 2. c. 5. have a Certificate upon an Attaint, if it pass against him by Default, where he hath Matter to bar the Attaint by Release or other Writing, &c.
- F** And if the Record of Assise be removed into the Common Pleas, the Party may sue a Certificate in the Common Pleas before the Justices there, although the Assise be taken of Lands in another County. See Title Procefs, H. 33 H. 6. 7 H. 4. 45. ac. 33 H. 6. 20,
- G** (b) And the Procefs in a Certificate is Summons against the Jury, and the Venire facias against the Party, &c. and after a Distress. 21. Nota, Cape pro fine was awarded pendent the Certificate of Assise.
- H** (c) And Nisi prius shall be granted in a Certificate, if the Land be in another County than where the Certificate is brought.

(a) See 7 H. 4. 45. Assise taken in Banco, which is removed, a Certificate shall issue upon the Rolls there, and shall be taken by Nisi prius in the County, 2 H. 5. 5. a Certificate is not grantable on the Rolls; but by the same Justices before whom the Assise passed: But by an original Writ, as 21 Ed. 3. 3. an Assise taken in the Country and adjourned into Bank for Difficulty, and the Judgment given there: No Certificate shall issue upon the Rolls in Bank, but the Record shall be remanded to the Justices assigned, and they shall issue the Certificate upon the Rolls before them. See 33 H. 6. 20. where after a Record of a Recovery in an Assise was sent into Bank by Mittimus, a Certificate was there granted upon the Rolls there: But Note; It seems this

Certificate was upon the Record, as it was 21 Ed. 3. 3. on a Fine, and 2 H. 5. 5. on a Judgment &c. had before the same Justices; for the Statute is, quod veniat coram Justiciariis qui Assisam illam ceperint; but on a Release, as the Case is 33 H. 6. 20. there the Clause is Justiciarii, &c. See Rot. Parl. 9 Ed. 2. M. 7. Dorso, after the Death of the Justices of Assise, a Certificate before other Justices assigned by Patent.

(b) And the Jurors shall have the View here. See 3 H. 4. 14.

(c) See the Statute Mag. Char. c. 12. and 7 H. 4. 45. If an Assise be arraigned in B. R. at York, and the Bank (Court) is after removed to Westminster, he shall have a Certificate upon the Rolls, and Nisi prius.

Writ of Assise of Nufance.

4 Ed. 3. 36. &
5 Ed. 2. 43.
Fitz. Nufance
12.

Aktion sur le
Case 36.

4 Aff. 3. If
Nufance be,
and after he
to whom the

Nufance is alien the Land, the Feoffee shall not have Assise, because it was before his Interest, but the Tenant shall answer to the Nufance, as well before his Time as after. 19 Aff. 9.

ASSISE of Nufance lieth where a Man levieth a Nufance to my Freehold, which I have for Life, in Tail, or in Fee-simple; then I shall have the Writ to redrefs the Nufance (a).

And if that the Nufance be done in one County, and the Land to which the Nufance is done be in another County, then he ought to sue several Writs of Assise of Nufance, to each Sheriff a Writ, and a Patent made to certain Persons to be Justices in that Assise, as it shall be in Assise of Common of Pasture, or Turbary, or Rent, or the like; and the Form of the Writ is such:

The King to the Sberiff, &c. A. hath complained unto us, that B. unjustly and without Judgment hath beightened a certain Pool in C. in your County, to the Nufance of his Freehold in L. in the County of H. after the first Passage, &c. And therefore we command you, that if the aforesaid A. shall make you secure to prosecute his Claim, then cause twelve free and lawful Men of that Neighbourhood to view that Pool, and their Names to be put in the Writ, &c.

And in the other Writ, which shall be directed unto the Sheriff where the Land is, to which the Nufance is, he shall say in the Writ, *Videre tenementum illud.* So that the Jurors where the Land is, shall see the Land, and the Jurors in the other County shall see the Pool where the Nufance is done.

And moreover he shall say in the Writ, *And their Names to be put in the Writ, and summon them by good Summoners, that they be before our beloved and faithful R. and F. and those whom we have associated unto them, at a certain Day and Place in the Confines of the County aforesaid, &c. ready, &c.* And the Form of the Patent is such:

The King to his beloved, &c. Know ye, that we have constituted you our Justices to take the Assise which B. hath arraigned before you by our Writs against N. touching a certain Pool beightened in C. in the County of S. to the Nufance of his Freehold in L. in the County of H. And therefore, &c. that at a certain Day, &c. in the Confines of the Counties aforesaid which you shall appoint for this Purpose, you take that Assise, doing thereon what to Justice belongs; for we have commanded our Sheriffs in the Counties aforesaid, that at a certain Day and Place in the Confines of the said Counties, whereof you shall give them Notice, they cause that Assise to come before you: In Witness whereof we have caused these our Letters to be made Patents. Witness, &c.

(a) Where he may abate the Nufance. See 8 Ed. 4. 5. But by *Hankf.* he shall not have Trespals after the Abatement; but if he brings an Assise, and the Defendant abates it pending the Writ, the Writ shall abate. 2 H. 4. 11. See

6 Ed. 2. *Aff.* 454. Parishioners may abate a Nufance levied in the Churchyard, though it has remained there twenty Years. So if the Plaintiff himself abates it pending the Writ, the Writ shall abate 46 *Aff.* 9.

N And a Man shall have the like Writ, if a Man have a Way to (a) his Land or House, and another stop the Way, he shall have an Assise of Nufance for that Stopping; and if the Way be in one County, and the Land to which the Way is, in another County, then he shall have two Writs of Assise of Nufance, to each County one, and a Patent made to certain Persons, as is aforesaid; and the Form of the Writ is such:

21 Ed. 3. 22.
20 Ed. 3. 18.
16 Ed. 3. Fitz.
Nufance 3.
Vi. 11 H. 4.
25. It shall be
brought in
Confinio Co-
mitatus.
14 H. 8. 31.
con. 33 H. 6.
27. con. 2 H.
4. 11. con.
48 Ed. 3. 13.

The King, &c. A. hath complained unto us, that B. unjustly and without Judgment hath straightened a certain Way in B. in your County, to the Nufance of his Freehold in C. in the County of S. after the first, &c. and in the mean time cause twelve, &c. to view the Way, and their Names, &c. and summon, &c.

And unto the Sheriff where the Land is to which the Way belongeth, the Writ is, *Wherefore he hath straightened a certain Way in B. in the County of C. to the Nufance of his Freehold in S. in your County, after the first, &c. And therefore we command you, &c. to view the Tenement, and their Names to be put in the Writ, and summon, &c. at a certain Day, &c. in the Confinies of the Counties aforesaid, which the same, &c.* And the Patent is such:

The King to his beloved, &c. Know ye, &c. to take the Assise which, &c. by our Writs, &c. touching the straightening a certain Way in B. in the County of Bedford, to the Nufance, &c. in C. in the County of Huntingdon; And therefore, &c. (as above).

O And a Man shall have a Writ of Assise, *Wherefore he hath unjustly and without Judgment levied or thrown down a certain Ditch in N. to the Nufance of his Freehold in N. or hath levied, or thrown down, or heightened, or lowered a certain Pool, &c. or hath obstructed, or straightened a certain Way in N. to the Nufance, &c. or hath thrown down a certain Hedge in N. to the Nufance, &c. or hath diverted a Water-course in N. to the Nufance of his Freehold in B. after the first Passage, &c. (as in an Assise of Common of Pasture, until) of that Neighbourhood to view that Ditch, that Pool, that Hedge, that Way, that Water-course, and Tenement, and their Names to be put in the Writ, and summon, &c. (as above in Common of Pasture) and the Form of the Patent is,*

11 H. 4. 25.
[184.]

The King to his beloved, &c. To take the Assise which A. &c. against B. of a certain Ditch levied or thrown down in N. or of a certain Pool heightened or lowered in N. or of a certain Pool levied (b) or thrown down in N. or of a certain Hedge

48 Ed. 3. 17.

(a) So that it ought to be a Way appendant; for of a Way in Grofs he shall have only a Writ on his Cafe, 11 H. 4. 26. *per Cur.* and so of a Way to a Church, because he has no Freehold in the Church, 4 Ed. 3. *Nufance* 8. but *contra* it seems as to a Way to a Church which one has *ratione Tenuræ*. *Quare*, if not an Action on the Cafe, or a Writ of Assise at his Election.

If a Way be so stopped, that the Party can pass but narrowly, an Action on the Cafe lies; but if it be wholly stopped, an Assise. 14 H. 4. 31. See *Lib. Entr.* 616. Where a Tertenant plows my Way, I may have an Assise, but not Cafe, not even where it is wholly stopped. 2 H. 4. 10. 33 H. 6. 26. If the Tenant stops my Way Assise lies; if a Stranger does it, an Action on the Cafe only; and it seems that in an Assise,

or on a *Quod permittat*, you need only name the Tenant of the Freehold where the Stoppage is. See 1 H. 4. 83. If I have Common appendant lying beyond a Bridge which a Prior ought to repair *ratione Tenuræ*, and the Bridge falls for Want of Reparation, I shall not have an Assise of Nufance, *Quare pontem prostravit*. 1. Because there is no such Writ. 2. Because here is only a Neglect, and for that an Action on the Cafe lies. So if A. ought to scour a Ditch, which he does not scour, whereby my Land is drowned, an Action on the Cafe only lies; but if he stops it up, an Assise of Nufance lies, *per Thinning*. If a Stranger stops my Way, an Action on the Cafe lies; but if the Tertenant does it, an Assise. 22 H. 6. 15.

(b) Note; An Assise *de libero Tenemento* does not lie of a Way. 34 *Aff.* 13. *Vide supra.*

Writ of Assise of Nufance.

Hedge levied or thrown down in N. or of a certain Way straightened or obstructed in N. or of a certain Water-course diverted in N. And therefore we command you, &c. (as above).

And for what an Assise of Nufance lieth, appeareth by these Verses:

fatum, num, s, a,
Fof stag sepe vi diverfi cursus aquarum,
Poscunt assifam, mercatum, feria, bancum.
i. terminari coram Justic' assisar' i. placitari in Banco.

22 H. 6. 14.
21 H. 4. 7.

And it appeareth by these Verses, to set up a Fair or a Market unto the A Nufance of (a) another Fair or Market, that he unto whose Nufance that Fair or Market is set up, shall have a Writ for so doing returnable into the King's Bench; and the Writ shall be in such Form:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon, &c. P. that he be before our Justices at Westminster, &c. to shew wheresore he hath set up a certain Market, or a certain Fair in I. to the Nufance of the free Market, or the free Fair of him the said A. in the same Town, or in another Town, after the first Passage, &c. as he saith: And have there the Summoners and this Writ, &c.

There is also another Form of Writ for the same, which is a *Quod permittat*, which is such:

The King, &c. Command P. that justly, &c. he permit the Bishop of Lincoln to put down a certain Market in Uppingham, which P. of M. Father of the aforesaid P. whose Heir he is, unjustly, &c. set up, to (b) the Nufance of the free Market of C. lately Bishop of Lincoln, Predecessor of the aforesaid Bishop, in Luddington, as it is said, and unless he will do it, and the aforesaid Bishop shall make you secure, &c. then summon, &c. the aforesaid P. that he be, &c. to shew wheresore, &c.

Note; If one makes a Ditch, &c. cross a River which runs to my Mill, although the Ditch be made on his own Soil: It is in my Election to have an Assise of Novel Diffisin or of Nufance. 32 *Aff.* 2.

(a) *Note; Case does not lie, nor an Assise of Nufance where it is damnum sine injuria, as for erecting a Mill near my Mill, whereby I lose the Custom, &c. of the Inhabitants.* 22 *H.* 6. 14. So for setting up a Grammar School. 11 *H.* 4. 47. But Case lies for setting up a Ferry, near an ancient Ferry on the same River. 22 *H.* 6. 14. See for this *Bract.* 235. *Mercatum levatum non est injuriosum nec proferendum si fit antiquius meo mercato.* 2. If it be erected within the third Part of twenty Miles; *viz. unius Diete.* 3. If set up for two or three Days at most, *meum Mercatum fuit vicinum.*

(b) See *Pasch.* 13 *Ed.* 3. *W. de Clynton* and *C.* his Wife, brought Nufance against *A.* for levying a Market in *W.* to the Nufance of their free Market in *S.* for that the said *W.* and *C.* in Right of the said *C.* had their Market every *Wednesday* in *S.* to which Market the Country People near used to come, &c. of whom the Plaintiffs had Toll, &c. the Defendant levied a

Market at *W.* to hold the same Day only two Miles from *S.* and that the Country People who used to come to *S.* do go to *W.* *Pole* defended the Tort, &c. and demanded the View, but it was not allowed; he also took Exception, for that they did not say their Market was elder; but not allowed; for it shall come by Way of Plea. 3. Exception, for that *C.* had it only for Life, and so ought to have another Count; *non allocat.* wheresore he pleaded, That he had not levied any Market to the Nufance of their Market, and Issue was taken, and the Averment received by Award. *Note; If the Market be on the same Day, it shall be intended a Nufance; but if it be on another Day, it shall not be so intended; and therefore it shall be put in Issue, whether it be a Nufance or not.* 11 *H.* 4. 5. In a *Scire facias* for the King to repeal a Patent. *Note; A Market was granted to be in D. on Saturdays, two Miles distant from C. where the King had a Market on Tuesdays.* *Note; The Patent commonly is ita quod non fit ad nocumet;* but if be a Nufance, though it has not that Clause, the second Patent is void against him to whom it is a Nufance. 22 *H.* 6. 14.

And

And that Writ was granted by the Chief Justice and Clerks of the Chancery, by which it seemeth, that a Man may disturb another to have or keep any Fair or Market unto the Nufance of his Fair or Market.

Writs of Nufance which are Vicontiel.

B WRITS of Nufance which are Vicontiel, (a) are those which do appear by the Verfes following:

*rica ca gultum ges lendinum
Fab fur porta, domus, vir gur mo murus, ovile,
Et pens, tradantur h.ec vicecomitibus.*

By the Statute of 6 R. 2. the Plaintiff may choose to have it before the Justices, or the Sheriff, Register 199.

And the Form of the Writ is such: *The King to the Sheriff, &c. A. of B. bath complained unto us, that B. (b) bath unjustly levied or thrown down a certain House, or obstructed a certain Gulf in N. to the Nufance, &c. in the same Town, or in another, after the first Passage, &c. into Gascoigne; And therefore we command you, that you hear that Plaint, and afterwards cause Justice to be done thereupon, that we may hear no more Clamour thereupon for want of Justice.*

C After the same Manner are Writs, Of a Sheepfold, a Gate, a young Quickset Hedge, a Mill, an House of Office, and the like, levied or thrown down. And those Writs may be removed at the Suit of the Plaintiff or Defendant, out of the County into the Common Pleas by a *Pone*, with Cause shewed in the Writ, as in a *Replevin* of his Cattle; and the *Pone* is such:

The King, &c. Put at the Petition of the Plaintiff the Plaint which is in your County by our Writ between A. and B. of a certain House levied or thrown down in C. by him the said B. unjustly levied or wholly thrown down, as it is said, and summon, &c. (as in a Pone of Beasts, &c.)

And the Rule in the Register is, That if he who erected or throweth down a House, Wall, or the like, dieth, that he to whose Nufance it is, or his Heir, shall have a *Quod permittat* against the Heir of him who did the Nufance, which Writs are amongst the Writs of *Quod permittat*. Register 199.

D And a Man shall have an Assise of Nufance for building of a House higher than his House, and so near his, that the Rain which falleth upon that House, falleth upon the Plaintiff's House. 18 Ed. 3. 22. Nufance 1.

E (c) And a Man shall not have an Assise of Nufance of a Way, if it be not appendant or appurtenant to his Freehold; as if a Man build a House over the Way which I have to my House, or to the Church, I shall have an Assise of Nufance. 4 Ed. 3. Fitz. Nufance 1. 46 Ed. 3. 23.

(a) See an Assise of Nufance, or an Action on the Case, lies for diverting *Majoris partis Curfus aque, &c.* Dyer 284. and yet one shall not have an Action on the Case for stopping of a Way; (*Quære*) but he may have an Assise of Nufance. Dyer 250.

(b) For levying of a Gofs to intercept the Course of Fish coming from the Sea, *usque ad Gurgitem meam superiorem.* 46 Aff. 9

(c) But he shall have a Writ on the Case for such Way in Grofs. 11 H. 4. 26. But by the

better Opinion, the Writ shall not be *Quære levavit quandam Domum ad nocumentum liberi tenementi.* But *Quære obstruxit vel arctavit viam ad nocumentum, &c.* Et *quod Juratores videant viam vel tenementum.* So if a Man builds a House cros a Watercourse to a Mill, the Writ shall be *Quod divertit Cursum aque ad nocumentum, &c.* *Quære* if the Writ may not be *Quod Domum levavit ad nocumentum liberi tenementi.* 11 H. 4. 25.

And in a Writ of Nufance, the Defendant fhall have the View, and fhall F
50 Ed. 3. 12. be effoined; and if afterwards he makes Default, a Distrefs fhall be awarded
againft him for to answer, &c. and not save his Default. P. 42 Ed. 3. 9.

And if a Man levy a Nufance unto the Houfe of another who hath therein G
an Eftate but for Term of Years, then he fhall not have an Affife of Nu-
[185.] fance, but an Action upon the Cafe againft him, becaufe he hath no Freehold:
But yet it feemeth he may enter and abate the Nufance.

But his Leffee And if a Writ of Nufance be removed out of the County, and the Sheriff A
fhall have, 13 return, that the Defendant hath not any Thing, &c. the Party fhall have
H. 3. Fitz. Attachment, Distrefs, and no other Procefs, &c. becaufe it toucheth Freehold.
Aff. 437. But in an Affife of Nufance the Procefs is as in Affife of *Novel Diffifin*.

And the Parifhioners may pull down a Wall which is fet up to their Nu- B
fance in their Way to the Church, *quod vide* 6 Ed. 2.

And in an Affife of Nufance he may in his Plea fhew the Nufance to be C
to diverfe Freeholds.

And if the Ways be ftraightened, or the Alleys or Lanes in any Town, City D
or Borough Corporate be filled with Filth or Dung, or fuch Things by which
Means Infection may increafe, then he who will fue may procure fuch Writ to
have them cleaned and made clean; and the Writ is fuch:

*The King to the Mayor and his Bailiffs of Oxford, greeting: Becaufe we have
received Information from Testimony deferving Credit, that by Dung and Dungbills,
and alfo Swine Coats and frequent Access of Swine, and much other Filthineffes
which are in the Ways and Lanes of the faid City and the Suburbs thereof, the
Air there is fo much corrupted and infected, that a dreadful Terror strikes the
Masters and Scholars dwelling in the fame, and others converfant and paffing there,
the Benefit of wholfome Air is hindered, the Condition of Men grievoufly hurt, and
other intolerable Difadvantages, and many Dangers from fuch Corruption are known
to proceed, to the Nufance of the Masters and Scholars aforefaid, and of others there
converfant and paffing, and to the manifefst Danger of their Lives: We being
unwilling any longer to endure fuch great and intolerable Defaults, command you,
that without any Dclay you caufe all the Streets and Lanes in the City aforefaid,
and its Suburbs, to be cleaned and for the future kept clean from Dung and
Dungbills, and the other Filthineffes aforefaid, left by the Corruptions or Filthi-
neffes aforefaid Damage or Danger for the future happen to any Persons by your
Default, for which we ought grievoufly to attach you, as Contemners of our Man-
date. Witnefs, &c.*

And upon that he fhall have an *Alias*, a *Pluries*, and Attachment, if they
do not cleanfe them, &c. But for Villages in the Country which are not Cor-
porate, fuch Writ doth not lie.

Writ de Association in Assise, and of Writs de Si non omnes.

E A Writ of Association is a Patent made to one or more, when an Assise of Novel Disseisin or Certificate upon Assise of Novel Disseisin is sued. Then the King of his own Motion, or the Plaintiff, may sue to have other Persons associated unto the Justices of Assise to take that Assise; and the Form of the Writ or Patent is such:

16 Aff. 6,
Assise 206.
Note, There is one Si non omnes general, which is special Si non

entred of Record, and remains with the Justices for their Warrant to take other Assises; and the omnes is annexed to the Record, and sent as Parcel.

The King to his beloved and faithful C. and D. or, To his beloved and faithful F. greeting: Know ye, that we have associated you or either of you, or you to our beloved and faithful A. B. and G. to take the Assise of Novel Disseisin which F. hath arraigned before the aforesaid A. B. and G. by our Writ against H. of Tenements in N. nevertheless, so that if at a certain Day and Place which they the said A. B. and G. shall appoint for this Purpose, you or either of you shall happen to be present, they shall admit you or either of you, or you their Companions or Companion for this Purpose, otherwise they the said A. B. and G. (your Presence or the Presence of either of you not being expected) may proceed to the taking that Assise: And therefore we command you, that you or either of you, or you attend the taking that Assise, together with the aforesaid A. B. and G. in Form aforesaid, doing thereupon that which to Justice belongs, according to the Law and Custom of our Realm; saving to us the Amercements from thence coming, for we have commanded them the said A. B. and G. that they admit you or either of you, or you their Companions or Companion for this Purpose, as aforesaid: In Witness whereof we have caused these our Letters, &c.

(a) And upon that Patent of Association the King shall send his Writ unto the Justices of Assise, commanding them thereby to admit him or them, &c. and the Writ is such:

See for the Exposition of (alter) Dyer 310. 338. L. 5 Ed. 4. 11. Br. Assise 386.

The King to his beloved and faithful A. B. and G. greeting: Know ye, that we have associated unto you our beloved and faithful G. and D. or either of them; or thus, our beloved and faithful F. to take the Assise of Novel Disseisin which E. hath arraigned before you by our Writ against H. and others contained in our original Writ, of Tenements in N. or of Common of Pasture in N. nevertheless, so that if at a certain Day and Place which you shall appoint for this Purpose, them the said C. and D. or either of them; or thus, him the said F. you admit your Companions or Companion for this Purpose, otherwise you (the Presence of them the said C. and D. or either of them not being expected; (b) or thus, of him the said F.) may proceed to the taking of that Assise: And therefore we command you, that you admit them the said C. and D. or either of them; or thus, him the said F. your Companions or Companion for this Purpose in Form aforesaid; for we have commanded them the said C. and D. that they or either of them; or thus, him the said F. that they shall attend, or he shall attend, together with you, as is aforesaid. In Witness, &c.

(a) Note; The Justices may refuse to admit the Associate, except the Writ be directed to them. 5 Ed. 4. Aff. 459.

(b) Vel sic; Aliquis singulari iuribus quibus C. & D. abesse contigerit, &c.

And if several Assises or Certificates of Assises be sued before several Justices in one County for Lands, Tenements, Rents or Commons, and afterwards the King maketh new Justices to take all Assises or Certificates and Juries which are to be taken in the same County, the King may make an Association to the Justices new assigned, thus:

[186.]

The King to his beloved and faithful W. of D. R. of A. and R. of P. greeting: Know ye, that we have constituted you our Justices to take all Assises, Juries and Certificates arraigned before any of our Justices whomsoever by our Writs in the County of Lincoln; And afterwards have commanded you, that if you all could not be present conveniently at the taking of the Assises, Juries and Certificates aforesaid, then two of you who should happen to be present should proceed to the taking of the same Assises, Juries and Certificates, according to the Law and Custom of our Realm, We have associated unto you our beloved and faithful A. to take the Assises, Juries and Certificates aforesaid together with you; nevertheless, so that if at certain Days and Places which you or two of you shall appoint for this Purpose, it happens that he the said A. be present, then that you or two of you admit him your Companion, or otherwise you or two of you (the Presence of him the said A. not being expected) may proceed to the taking of the Assises, Juries and Certificates aforesaid: And therefore we command you, &c.

And a Patent made to him who shall be Associate, reciting the Patent made to the Justices, and the Writ of *Si non omnes*, and then shall say, *Associavimus vos, &c.* and the Form of the Writ is such:

The King to his beloved and faithful A. greeting: Know ye, that whereas we have constituted our beloved and faithful W. of D. R. of A. and R. of P. our Justices to take all Assises, Juries and Certificates arraigned before any of our Justices whomsoever by our Writs in the County of Lincoln; and afterwards commanded them the said W. of D. R. and R. that if they all could not be present conveniently at the taking of the Assises, Juries and Certificates aforesaid, then two of them who should happen to be then present should proceed to the taking of the same Assises, Juries and Certificates, according to the Law and Custom of our Realm, We have associated you to the aforesaid W. R. and R. and two of them, to take the Assises, Juries and Certificates aforesaid in the County aforesaid; nevertheless, so that if at certain Days and Places which they the said W. R. and R. or two of them shall appoint for this Purpose, it shall happen that you be present, then they or two of them shall admit you their Companion for this Purpose, or otherwise they the said W. R. and R. or two of them (your Presence not being expected) may proceed to the taking of the same Assises, Juries and Certificates aforesaid: And therefore we command you, that you attend the taking of the Assises, Juries and Certificates aforesaid together with the said W. R. and R. or two of them in Form aforesaid, to do, &c. saving, &c. We have also commanded them the said W. R. and R. that they or two of them do admit you their Companion for this Purpose, as is aforesaid: In Witness whereof we have caused these our Letters to be made Patents. Witness, &c.

L. 5 Ed. 4. 111.
Br. Ail. 386.

And afterwards when the King hath made his Justices of Assise by Letters A Patent; and by other Letters Patent hath associated unto them another Person, yet he is used afterwards to make other Letters Patent, as well unto the Justices of Assise, as to those whom he hath associated unto them, that if they all do not come at one Time, to take those Assises, Juries, and Certificates, that then those who do come shall take the same Assises, Juries and Certificates: And that Patent is called a *Si non omnes*; and the Form of the Patent is such:

The

The King to his beloved and faithful W. of D. R. of A. and R. of P. and A. of B. greeting: Whereas we have constituted you the aforesaid W. R. and R. our Justices to take all Assises, &c. arraigned, &c. (as above, until) and afterwards we commanded you, that if you all, &c. should proceed subsequently, we have associated to you, and to two of you, the aforesaid A. to take the Assises, Juries and Certificates aforesaid, in the County aforesaid; we command you, that if you all cannot conveniently be present at the taking of the Assises, Juries and Certificates aforesaid, then three or two of you (of whom we will one of you the aforesaid W. R. and R. to be one) shall proceed to the taking of the same Assises, &c. according to the Law and Custom of our Realm, &c. Witness, &c.

- B And these three Patents next before are commonly made when any Assise is sued; as one to the Justices of Assises, and another Patent to the Clerk of the Assises of Association, and the Patent of *Si non omnes*, as well made to the Justices and the Clerk of the Assises together.
- C (a) And if the King makes his Justices of Assise in any County, and afterwards he maketh an Association to them, and a Patent of *Si non omnes*, *Et c.* 32 H. 6. 10. And afterwards divers Assises or Certificates of Assise remain before them not determined: The King at the next Assises may make a new Commission unto other Justices to take all those Assises and Certificates, and may make a new Association unto them by another Patent, and a *Si non omnes* also directed unto them.
- D But a general Patent of Assise to take all Assises and Juries, *Et c.* and Association lieth. But *M. 32 H. 6.* it is holden, that an Association after another Association allowed and admitted doth not lie, nor that the Justices then do not admit other Association in that Writ afterwards, so long as that Writ and Commission stand in Force. L. 5 Ed. 4. Br. Assise 386.
- E But in a special Assise no Association shall be made as it is holden the same Year, *M. 32 H. 6.* for he hath not in the Writ these Words, *Et his quos sibi associavimus.* But the Writ is directed to the Sheriff without those Words in the Writ, nor those Words are not in the Patent made to the Justices of that special Assise.
- F But if those Words be in the Writ, and in the Patent made to the Justices, then it seemeth an Association shall be made in that special Assise, as in other. And it appeareth in the Register that the other Association lieth after Association in one Writ.
- G And upon a new Commission made to other Justices, that the old Justices of Assise shall deliver their Records of the Assise unto the new Justices by Indenture, upon a Writ directed to them to deliver the Records.
- H And a Man may sue a Patent of Association for several Assises; and the Form of the Writ is such:

(a) See L. 5 Ed. 4. 129, 137. these Points resolved; viz. 1. That an Association may be on a special Assise, by a special Patent. 2. That by the Writ of Admittance he is not Justice (Associate) without shewing also the Patent of Association. 3. That by the Patent of Association

he is Justice, though there be no Writ of Admittance. 4. Though the Words of the Patent of Association shall be only *ad Assisiam hanc vice capiendam*; yet his Power remains till the Assise be determined, although it depend thro' divers Adjournments.

[187.]

We have associated you or either of you, &c. to take the Assise of Novel Disseisin which A. hath arraigned before, &c. of Tenements in N. and to take the Assise of Novel Disseisin which C. hath arraigned before the same, &c. against the aforesaid B. of Tenements in the same Town; nevertheless, so that if, &c.

And if the King make two Men his Justices of Assise in one County, and afterwards one of them is elsewhere in the King's Service, (a) so that he cannot intend to take those Assises or Juries, then the King by Patent may make another Justice in his Room, to take those Assises and Juries, and that Patent is in the Nature of an Association; and the Form of the Writ is such:

Yet he is Judge
before they
admit him, by
Markham,
L. 5 Ed. 4. 111.
Br. Ass. 386.

The King to his beloved and faithful A. greeting: Know you, that we have constituted you and our beloved and faithful G. our Justices to take all Assises, Juries and Certificates arraigned before any of our Justices whomsoever by our Writs in the County of L. and the aforesaid G. attends by our Command certain other Services of our's elsewhere, by reason whereof he has not Leisure for the taking the same Assises, Juries and Certificates, as we have received Information, We have constituted our beloved and faithful W. our Justice in the Place of him the said G. to take the Assises, Juries and Certificates aforesaid together with you; And therefore we command you, that you admit him the said W. your Companion in the Place of him the said G. for this Purpose, in Manner aforesaid; for we have commanded him the said W. that he attend for this Purpose in the Place of him the said G. together with you, &c.

And a Patent shall be made to him who shall be associate unto them in the Place of G. which shall be such:

The King to his beloved and faithful W. greeting: Know you, that whereas we have lately constituted our beloved and faithful A. and G. our Justices to take all Assises, &c. (as above, until) as we have received Information, We have constituted you our Justice in the Place of him the said G. to take the Assises, Juries and Certificates aforesaid together with the aforesaid A. And therefore we command you, that you attend for this Purpose with the aforesaid A. in the Place of him the said G. to do in Form aforesaid, &c. saving, &c. for we have commanded him the said A. that he admit you his Companion for this Purpose in the Place of him the said G. as is aforesaid: In Witness, &c.

And if the King make three Justices in Assise, and afterwards one of them dieth, the King may make a new Patent of Association unto another to associate him and the two in the Room of him who is dead, and a close Writ shall be directed to the two Justices who are alive to admit him, &c. and it appeareth by the Writ, that if the King maketh three Justices to take Assises, and make them a Patent of *Si non omnes*, that if one of them dieth, yet the other two may proceed; and the Patent is such:

L. 5 Ed. 4.
111.
Br. Ass. 286.

The King to his beloved and faithful I. of O. greeting: Know you, that whereas we have lately constituted our beloved and faithful I. I. and S. our Justices to take all Assises, Juries and Certificates arraigned before any of our Justices whomsoever by our Writs in the County of S. and after the Death of the aforesaid S. divers Assises, Juries and Certificates are arraigned before the aforesaid I. and I. we, for

(a) Or be dead; and note; A Justice of Assise cannot record a Nonsuit. 45 *Ass.* 3. Where one is made a Justice *ad omnes Assisas capiend'*, it

is good; and such may take the Assises without any Re attachment. Iued, although the Assise be removed. 28 *Ass.* 2.

certain Causes, have constituted you our Justice, as well to take all Assises, Juries and Certificates arraigned before the aforesaid I. I. and S. and afterwards before the same I. and I. as before any of our Justices whomsoever in the County aforesaid together with the same I. and I. And therefore we command you, that you attend to take the Assises, Juries and Certificates together with the aforesaid I. and I. in Manner aforesaid, to do, &c. saving, &c. for we have commanded the aforesaid I. and I. that they admit you their Companion for this Purpose, as is aforesaid.

C And a close Writ shall be directed to the Justices to admit the said Justice *W.* into their Society.

And the King may make Association in Juries as well as in Assises, as also in Attaints. And if the King make a Commission to take an Attaint or other Jury, and an Association in the same, and after one of the Justices dieth, the King may make a new Association in the same Writ, and so he may make one Association after another in the same Writ, as appeareth by the Register; and the Writ is such:

The King to his beloved, &c. I. of M. R. of M. and I. of F. greeting: Whereas we lately appointed W. of O. and you the aforesaid I. of M. and R. our Justices, to take the Jury of twenty-four Knights which R. hath arraigned before the aforesaid W. and you the aforesaid I. of M. and R. by our Writ against P. to convict the Jurors of an Assise of Novel Disseisin, which was summoned between him the said P. and the aforesaid R. and taken by our Writ at H. before the aforesaid W. and you the aforesaid R. of Tenements in S. in the County of N. and afterwards by our Writ we associated unto you (the aforesaid I. of M. and R.) you the aforesaid I. of F. to take all Assises, Juries, &c. arraigned in the said County together with the said W. and you, with the aforesaid I. of M. and R. or two of you, and that Jury before the aforesaid W. and you the said R. and I. by virtue of the Association aforesaid, until to the taking thereof, stood by the Pleading, and the said W. being now dead, we have constituted in the Place of him the said W. our beloved and faithful B. to take that Jury together with you; We command you, that you admit the aforesaid B. for this Purpose in the Place of him the said W. and proceed together with him to take that Jury, according to the Law and Custom of our Realm; for we have commanded the aforesaid B. that he attend together with you for this Purpose, as is aforesaid.

And thereupon another Patent shall be made to the said *B.* of Association, as before in other Cases. Furby 2 H. 4. 2. he is Officer, Judge and Commissioner in this Writ.

D And an Association may be made unto the Sheriff upon a Writ of Redisseisin directed to him, as well as it may be upon an Assise of *Novel Disseisin*, as appeareth by the Register; which Writ was awarded by *W. de Harloston*.

A And although the Assise be discontinued for not coming of the Justices, &c. [188.] yet when the Re-attachment is sued, the Writs of Association and of *Si non omnes* stand in Force; and a Re-attachment shall or may be sued to revive those Assises; (a) although there be several Adjournments of the Assises, yet the Associations and Writs of *Si non omnes* shall serve for all the Assises. 12 H. 4. 19, 20. L. 5 Ed 4. 111. Br. Assise 386. 14 Aff. 15. Br. Ass. 196.

(a) See it accordingly adjudged, 12 H. 4. 20, 22. 14 Aff. 14. be the Association in general, or the Assise taken by special Adjournments.

Writ of Redisseisin.

THE Writ of Redisseisin (a) lieth where a Man doth recover, by Affise of **B**
Novel Disseisin, Land, Rent or Common, and the like, and is put in Possession thereof by Verdict, and afterwards he is disseised of the same Land, Rent or Common by him by whom he was disseised before; then he shall have this Writ upon the Statute of *Merton*, c. 3. and the Form of the Writ is such:

C

The King to the Sberiff, &c. A. and B. his Wife, have shewed unto us, that whereas R. formerly the Husband of the said B. and she the said B. in our Court, before our Justices last itinerant, at N. in your County; or thus, before our beloved and faithful H. and K. our Justices assigned to take the Affises in the County aforesaid at, &c. (or thus, if the Justices were dead) before H. and his Companions lately our Justices assigned to take the Affises in the County aforesaid at N. recovered their Seisin against S. of twenty Acres of Land and ten Shillings Rent with the Appurtenances in K. by the Recognizance of an Affise of Novel Disseisin between them, &c. or thus, taken between the aforesaid A. B. and S. the aforesaid S. again hath unjustly disseised them the said A. and B. of the Land and Rent aforesaid; or thus, of one Acre of Land of the Land aforesaid; And therefore we command you, that taking with you the Keepers (b) of the Pleas of our Crown and twelve, as well Knights as other free and lawful Men of your County, as well of those who were in the first Jury, as of others, you go in your own Person to the aforesaid Land and Tenement from whence the Rent issuetb, and by their Oath you diligently make Inquisition thereof; and if you shall find that they the said A. and B. are again unjustly disseised by the aforesaid S. of the said Land and Rent, then take him the said S. and cause him to be safely kept in our Prison, so that he be in no wise delivered from that Prison without our special Command, and them the said A. and B. to be reseised of the said Land and Rent, and cause double their Damages which they have sustained by reason of that Redisseisin, to be taxed by the Oath of the aforesaid twelve, and to be levied without Delay of the Goods and Chattels of the aforesaid S. in your Bailiwick, and to be rendered to them the said A. and B. according to the Form of the Statute provided in such like Cases of Redisseisin. (c) And give Notice to the aforesaid S. and D. who now hold that Land, that they may be present at the making that Inquest, if to them it shall seem expedient. Witness, &c.

23 Aff. 7.

(a) If he distrains for the Rent, he shall have a Redisseisin on a Rescous made, without any other Seisin. 40 Aff. 23.

(b) 23 Aff. 7. If there be but one Coroner in the County, he may make it, otherwise all must join. 20 H. 6. 17. And note; A Redisseisin taken before the Sheriff and one Coroner is not good. Also note this Clause, *assumptis tecum*, &c. was omitted, and therefore the Writ abated; 26 Ed. 3. 57. and herein the Sheriff is Judge, 1 H. 4. 5. but if there are four Coroners, but one is dead, the Sheriff ought to return this. It

seems, that if the Writ be *accedas ad Villam ubi Tenementa prædicta sunt*, &c. it is erroneous, 11 H. 4. 6, 94. adjudged. But if the Rent issues out of more (many) Lands in divers Vills, it is sufficient to take the Redisseisin in one Vill only, 40 Aff. 23. but the View ought to be made of all.

(c) See 9 H. 4. 5. Note; The Sheriff is Judge here, and therefore it seems the Array is not challengeable, but the Panel is; and it seems that the Sheriff may receive Pleas herein, as a Release, &c. *Kelw.* 125. 40 Aff. 23.

And

- D And by that Writ appeareth, That a Man shall have a Redisseisin against the Tenant, if he recover by Assise of *Novel Disseisin* before Justices in Eyre, or before Justices of Assise; (a) and so if he recover in Assise of *Novel Disseisin* in the King's Bench or Common Pleas, if he be redisseised, he shall have that Writ.
- E If Husband and Wife be disseised, and recover by Assise, and the Husband dieth, and the Wife taketh another Husband, and they be disseised again, by the Register they shall have a Writ of Redisseisin, although the Husband were not disseised before; and the Writ willeth that the Sheriff inquire whether they were disseised before, and so the Husband was not; but that is not material, because it is the Right (b) of the Wife, and she was disseised before. But if the Wife lose in the Assise of *Novel Disseisin*, and afterwards take Husband, and they redisseise the Plaintiff, he shall not have a Writ of Redisseisin; *quod vide H. 9 H. 4.*
- F (c) And also a Redisseisin lieth against him who committed the Redisseisin, and against another who was not Disseisor, if he be Tenant of the Land.
- G And also if a Man recover Land by Assise of *Novel Disseisin*, and after is redisseised of Parcel of the same, he shall have a Writ of Redisseisin.
- H And in a Redisseisin against Husband and Wife the Writ shall be thus in the End; *And the same A. double his Damages which he hath sustained by reason of that Redisseisin, to be levied of the Lands of them the said B. and S. and of the Chattels of him the said B. in your Bailiwick*; because the Wife hath not any Chattel.
- I And if the Sheriff will not execute the Writ of Redisseisin, he shall have an *Alias* and a *Pluries* directed to him, and if he then do it not, he shall have an Attachment against him to the Coroners, &c. and upon the same, Distress infinite.
- K And it appeareth in the Register, that a Man shall have a Writ of Association in a Redisseisin; and the Writ is such:
- The King to the Sheriff, &c. Know you, that whereas lately at the Prosecution of N. suggesting to us, that he in our Court before, &c. at K. by our Writ recovered his Seisin against S. &c. (reciting the whole Writ, until) if to him it shall seem expedient, we have associated unto you our beloved and faithful R. to do and fulfil the Premises together with you; yet so that if at a certain Day, which you shall appoint for this Purpose, he the said R. happens to be present, then you admit him your Companion for this Purpose, otherwise (the Presence of him the said R. not being expected) you may proceed to do and fulfil the Premises: And therefore we command you, that you admit him the said R. your Companion for this Purpose, in Form aforesaid; for we have commanded him the said R. that he attend with you to do and fulfil the Premises as is aforesaid.*

(a) See 26 Ed. 3. 57. A Writ of Redisseisin granted on a Recovery in B. R. sued in Chancery, and held good by the Award of Court.

(b) See 9 H. 4. 5. And it seems one may have a special Writ supposing that the Wife *dum sola* was redisseised; but not that the Husband and Wife redisseised, *Quare post.* 191. it seems no Law; and that the Wife only shall be taken.

(c) If one recovers in an Assise and is redisseised by the Disseisor, another Redisseisin lies, *per Thirning*, 9 H. 4. 5. for Jointenancy is a good Plea in a Redisseisin. 33 Ed. 3. *Redisseisin* 7. And note this Judgment in Redisseisin, *Quod recuperet seisinam suam. Rast. Entr.* 548.

And by the Register, the Writ directed to the Sheriff shall be close, as also the other Writ directed unto him who is associated to him, and yet the same is in its Nature a Patent.

And if a Man recover by Assise of Novel Disseisin, Common of Pasture or L other Profit apprender in the Soil of another, or any Office or Corrody; if he be redisseised, he shall have a Redisseisin; and the Writ shall be such:

[189.]

The King to the Sheriff, &c. A. hath shewed unto us, that whereas he in our Court before our beloved and faithful W. and his Companions our Justices assigned to take the Assises, &c. at N. by our Writ recovered his Seisin against I. of Common of Pasture in S. which belongs to his Freehold in the same Town, by the Recognizance of an Assise of Novel Disseisin there taken thereof between them, the aforesaid I. hath again unjustly disseised the aforesaid A. of the Common of Pasture aforesaid; And therefore, &c. you go to that Pasture, and by their Oath, &c. (of reasonable Estovers, thus) recovered his Seisin against I. of his reasonable Estovers to be taken in three hundred Acres of Wood with the Appurtenances in W. which belong to his Freehold in the same Town, by Recognizance of Assise, &c.

And if a Man recover by Assise of Novel Disseisin any Land or Tenement A before the Bailiffs of any Liberty, where they demand Conufance of Pleas before Justices of Assise, and the Justices grant the same, because the Lands are within that Liberty, and afterwards he be redisseised of the same Land, then he shall have a Writ of Redisseisin; and the Writ shall be such:

The King to the Sheriff of Berks, greeting: A. hath shewed unto us, that whereas he lately arraigned a certain Assise of Novel Disseisin before our beloved and faithful I. and his Companions, &c. assigned by our Writ against P. of two Feet of Land in Length and one Foot of Land in Breadth with the Appurtenances in W. which said Assise was returned by the same Justices into the Court of the Abbot of Reading, according to the Liberties granted to the same Abbot by the Charters of our Progenitors, formerly Kings of England, and our Confirmation thereof, to be pleaded before the Bailiff of the same Abbot, and the same A. recovered his Seisin of the Land aforesaid against the said E. in the same Court, by Recognizance of an Assise of Novel Disseisin there taken between them, the aforesaid E. hath again disseised him the said A. of the said, &c. (as in the first Writ).

And also a Man shall have a Redisseisin upon a Recovery in Assise of Nufance, Of a Pool unjustly levied, &c. or of a Water-course diverted, or of a Way straightened or obstructed; and the Form of the Writ is such:

The King to the Sheriff, &c. A. hath shewed unto us, &c. (until) assigned, arraigned a certain Assise against B. by our Writ of a certain Pool unjustly levied in N. to the Nufance of his Freehold in K. and by the Recognizance of the same Assise thereof between them taken at E. before the same Justices, that Pool levied by the aforesaid B. was disallowed and to be thrown down; the aforesaid B. hath again unjustly and without Judgment levied that Pool: And because this is unjustly and manifestly against our Peace, we command you, that taking with you, &c. (until) you go to that Pool and Tenement, and by their Oath make Inquisition thereof diligently, and if you shall find by that Inquisition, that he hath again unjustly levied the said Pool, then take him the said B. &c. (until) special Command, and cause that Pool to be thrown down without Delay, and the same A. to have double his Damages which he hath sustained by reason of that Redisseisin, &c. according to the Form of the Statute, &c. (as before).

And

C And the like Writs are in the Register of Redisseisin, for the Mifturning of Ant. 66. a Mill, or of a Way, or of an Office, and the like.

And if the Sheriff do deliver any such, without the special Command of the King, who are convict of such Redisseisins, he shall be grievously amerced, and notwithstanding those who are so delivered, shall be also grievously punished, &c. by the Statute of *Marlebridge, cap. 8.*

And by the Statute of *Westm. 2. cap. 26.* he who recovereth in a Redisseisin, shall recover double Damages; and the Defendants shall not be bailed by a common Writ; and by the same Statute is given a Writ of *Post-Disseisin*, in which Writ he shall also recover double Damages against the Defendant.

D And if a Man do recover by Redisseisin, and afterwards is disseised again by him by whom the first Redisseisin was before, he shall have a new Redisseisin; and so one Redisseisin after another every Time he is redisseised.

E And a Redisseisin shall be maintainable against any of the Disseisors.

F And if a Man recover Land by Assise of *Novel Disseisin*, unto which a Common is appendant, &c. and after he is disseised of the Common again, he shall have a Redisseisin, &c. 1 Inst. 154. b.
8 Ed. 3.
Rediff. 6.

G And if a Man sue a Writ of *Droit Close*, and make Protestation in the Nature of Assise of *Novel Disseisin*, and recover in that Writ, and after he is redisseised, he shall not have a Redisseisin; for that Writ doth not lie upon an Assise at the Common Law. *M. 14 Ed. 3.* 1 Inst. 154. a.

H And if all the Jurors in the Assise be dead but one, and afterwards he who recovered is redisseised, &c. it is a Question whether he shall have a Redisseisin, because that the Statute is *Per primos Juratores & alios*, &c. which see debated in *H. 8. 5.* But it seemeth that the Statute makes the Law, and because it is a penal Statute it shall be taken strictly; and therefore if all the Jurors be dead but one, that he shall not have a Redisseisin, because he cannot be tried by the former Jurors; for one Juror is not a sufficient Witness himself, to say that it is a Redisseisin of the same Tenements; and therefore it seemeth there ought to be two Jurors to testify the same. 27 Ass. 7.
1 Inst. 154. b.

I And Tenant by Statute-merchant or Staple shall have an Assise of *Novel Disseisin* if he be ousted; and also a Redisseisin if he be redisseised. 3 H. 5. r.
per Pole contr.
Hankf. in
Error.
And so Tenant by *Elegit* shall have an Assise of *Novel Disseisin*, and a Redisseisin if he be ousted, by the Statute of *Westm. 2. c. 18.*

Writ of Post-Disseisin.

[190.]

A THE Writ of *Post-Disseisin* is given by the Statute of *Westm. 2. c. 26.* and lieth where a Man recovereth Lands or Tenements by a *Præcipe quod reddat*, by Default or Reddition, and afterwards he is ousted again by him against whom he recovered, &c. Then he shall have that Writ of *Post-Disseisin*, and shall recover double Damages, and the Party shall be punished as he shall be if he were attainted of Redisseisin: But if he recover by Assise of *Mortdauncestor* or *Juris utrum*, or in those Actions which pass by Juries and Verdicts, then he shall have his Writ founded upon the Statute of *Merton, c. 3.* of *Post-Disseisin*.

Disseisin. And that Writ shall be directed to the Sheriff as the Writ of Redisseisin shall be; and if the Sheriff will not execute the Writ as he ought to do, and as he is commanded, then he may sue forth an *Alias* and a *Pluries*, *vel causam nobis significes*, &c. And if that do not any Thing, nor he return a Cause, then the Party may sue an Attachment against the Sheriff directed to the Coroners, &c. and upon that a Distress; and the Form of the Writ of *Post-Disseisin* is such:

The King to the Sheriff, &c. A. hath shewed unto us, That whereas he, in our Court before our beloved and faithful W. and his Companions our Justices of the Bench at E. by our Writ recovered his Seisin against I. of one Messuage with the Appurtenances in S. by the Consideration of the same Court; he the said I. hath since unjustly disseised the aforesaid A. of the Land aforesaid; and therefore we command you, that taking with you, &c. (as in the Writ of Redisseisin, &c.) lawful Men of your County, you go, &c. (until) afterward unjustly disseised him of the Land aforesaid, then him the said I. &c. (until) which he hath sustained by reason of that Post-Disseisin, &c. according to the Form of the Statute of Westminster provided touching such Post-Disseisin; and give Notice to the aforesaid I. that, &c.

And in a *Post-Disseisin* the Writ shall not say, *Tam de illis qui in prima jurata*, but in Case where he recovereth by Recognizance of the Assise or Jury.

5 R. 2. Br. 9. And if a Man recover Lands or Tenements in Value against the Vouchee in a *Præcipe quod reddat* by Default, and afterwards that he is put in Execution by the Sheriff, the Vouchee do disseise him of the same Lands which he so recovered in Value, he shall have a *Post-Disseisin* of that Land so recovered in Value against the Vouchee. And the Writ it such:

*The King to the Sheriff, &c. C. hath shewed unto us, That whereas B. Prior of D. lately in our Court before our beloved and faithful R. F. and his Companions our Justices of the Bench at Westminster, by Writ demanded against the aforesaid C. seven Acres of Meadow with the Appurtenances in I. and he the same C. vouched to warranty thereof in the Plea aforesaid R. of S. and by the Default which he the same R. afterwards made in the same Court, it was considered, that the aforesaid Prior should recover his Seisin against the aforesaid C. in the Plea aforesaid, that he the said C. should have of the Meadow of the aforesaid R. of S. to the Value of the aforesaid seven Acres of Meadow, by Virtue of which Consideration, seven Acres of Meadow with the Appurtenances of the Meadow of the aforesaid R. of S. in G. were assigned to the aforesaid C. by our then Sheriff of Gloucestershire, by Virtue of our certain Writ of Judgment to him in this Behalf directed, the aforesaid R. of S. afterwards unjustly disseised the aforesaid C. of the said Meadow to him assigned, as is premised; and therefore we command you, that taking with you, &c. twelve as well Knights as other free and lawful Men of your County, in your own Person you go to the aforesaid Meadow assigned to him the said C. and by their Oath diligently cause Inquisition to be made thereupon, and if you shall find that he the said C. was afterwards unjustly disseised by the aforesaid R. of the said Meadow assigned to the said C. then take him the said R. and cause him to be kept safe in our Prison, so that he be in no wise delivered from that Prison, without our special Command, and cause him the said C. to be resealed of the aforesaid Meadow to him assigned, and double
his*

his Damages which he hath sustained by reason of that Post-Disseisin, by the Oath of the aforesaid twelve to be taxed, and levied without Delay, of the Goods and Chattels of the aforesaid R. in your Bailwick, to be rendered to him the said C. according to the Form of the Statute provided in Case of such Post-Disseisin, and give Notice to the aforesaid R. &c. Witnesses, &c.

D And if the Defendant make the Default at the *Scire facias* returned, then the Sheriff shall take the Inquest by Default, and the Process against the Jury shall be by Precept from the Sheriff to his Bailiff, &c. to summon twelve, &c. 15 H. 7. 8.

E And if a Man recover in a *Scire facias* upon a Fine, or upon a Recovery had before by Default of the Tenant, he shall have a Post-Disseisin against the Tenant, if he be afterwards ousted of the same Land; *quod vide M.* 15 H. 7.

F And if a Man be convict before the Sheriff upon a Redisseisin and Post-Disseisin, then he shall not be delivered out of Prison without the King's special Command, and then he ought to sue a *Certiorari* to remove the Record into the King's Bench, and there to agree with the King for his Fine. And thereupon he shall have a Writ to the Sheriff to deliver him out of Prison; and the Form of the Writ to remove the Record is such: 2 Inst. 115.

The King to the Sheriff, &c. On the Behalf of Henry of D. taken and detained in our Prison of Stafford for a certain Redisseisin made by him to Isabel, who was the Wife of Ric. of C. of a Moiety of one Messuage with the Appurtenances in C. as it is said, whereof he was convicted before you and the Keepers of the Pleas of our Crown in your County, by an Inquest made thereupon at C. by our Writ, we are besought, that whereas he hath already made Satisfaction to her the said Isabel for the Damages adjudged to her in this Behalf, and is ready to make a Fine with us for that which to us belongs in this Behalf, according to the Form of the Statute thereof provided by the Common Council of our Realm: We willing to provide for his Delivery, and that we may be able to do to him the said H. that which shall be just thereupon, willing to be certified upon the Record and Process of the Inquisition aforesaid; We command you, that if Judgment be thereupon given, you then send the Record and Process of the Inquisition aforesaid to us, with all Things touching them, under your Seal distinctly and openly, so that, &c. wheresoever, &c. that we may further do hereupon that which of Right, &c. to be done, &c. Witnesses, &c. [191. 7

A And that Writ of Post-Disseisin ought to be brought by those who first recovered, or by some of them, and of the same Land which was recovered, or of Part thereof, or against those, or some of them against whom the Recovery was. 7 Ed. 3. 24. con.

But if a Man recover by a *Præcipe quod reddat*, and after he is disseised by him against whom he recovered, and the Disseisor doth make Feoffment, and taketh back an Estate to him and another; he who first recovered shall have a Post-Disseisin against him and his Jointenant, as it seemeth, and he shall be punished by the Statute, if it be found against him.

But if he who loseth the Land by Default or Reddition in a *Præcipe quod reddat*, do after disseise him who recovered, and make a Feoffment in Fee unto another, or for Life, it seemeth he who recovered shall have a Post-Disseisin against him who disseised him again, although he be not Tenant of the

Land; for in a Writ of Post-Disseisin the Demandant shall not have Judgment to recover the Land, &c. but the Sheriff shall put and restore the Plaintiff to his Possession, if he find the Disseisin, &c. and shall take the Defendant and keep him in Prison until, &c.

And it seemeth, that Non-tenure is no Plea in a Writ of Post-Disseisin for the Defendant, but he ought for to answer the Disseisin, &c. when he comes in upon the *Scire facias*, &c. And if he make Default upon the *Scire facias* returned, the Sheriff shall take the Inquest: *Tamen quare*.

9 H. 6. 6.
7 R. 2.
Entry 55.

Writ of Entry in the Nature of Assise, which is called, Entrie in de Quibus.

9 H. 5. 13.
If this Writ
be brought
against a Par-
son, he shall
not have Aid
of the Patron
and Ordinary.

A Writ of *De quibus*, which is brought in the Place of an Assise, is where C a Man is (a) disseised of any Lands, Tenements or Rents, whereof he hath an Estate in Fee, then he may sue that Writ, and the Writ is such:

The King to the Sheriff, &c. Command A. that justly, &c. he render to B. one Messuage with the Appurtenances in D. which he claims to be his Right and Inheritance, of which the same A. unjustly and without Judgment disseised the aforesaid B. after the first Voyage of Lord Henry, King, into Gascoigne, &c. as it is said. And unless, &c.

And if a Man bring a Writ of Disseisin made to his Ancestor, then the Writ is of another Form, thus:

20 Ed. 2.
Brief 851.

Command A. that justly, &c. he render to B. one Messuage with the Appurtenances in D. which (b) he claims to be his Right and Inheritance, and of which the same A. unjustly and without Judgment disseised C. Father of the aforesaid B. (or other Ancestor of the said B.) whose Heir he is, after the first Voyage of Lord King Henry, &c. as it is said; (or thus, in the Per) which he claims, &c. and into which, &c. but by C. who demised that Messuage to him, who unjustly disseised E. the Father of, &c. or the aforesaid B. &c. after the first, &c.

And in the *Per* and *Cui*, thus:

Which he claims, &c. into which, &c. but by C. to whom D. demised that Messuage, who thereof unjustly and without Judgment, &c. the aforesaid E. Father of the aforesaid B. whose Heir he is, or the aforesaid B. &c. after the first, &c.

And in the *Post*, thus (c):

Which he claims, &c. into which, &c. but after the Disseisin which D. unjustly, &c. made to E. Father (or other Ancestor) of the aforesaid B. whose Heir he is, or to the aforesaid B. after the first Voyage, &c. as it is said, and whereof he complains, &c. and unless, &c.

(a) See accordant 9 H. 5. 9. and that after a Plea to the Writ he shall plead over to the Disseisin. 8 R. 2. Brief 928.

(b) See before Writ of Entry, viz. *In quibus non habet ingressum per* J. S. *qui dimisit dum habuit Custodiam ingr.* 15 H. 3. Brief 878. or *per* J. S. *qui tenuit in Villenage*, 31 Ed. 3. Counterplea of Voucher 121. But see a Writ *Quod non*

habet Ingressum nisi per Custodiam, and it was abated; for by the Statute he might have an Assise, or a Writ of Entry *sur Disseisin*. 4 Ed. 2. Brief 790.

(c) Note; This Writ in the *Post* lies by the Statute of *Marlebridge*, Chap. the last; for before that Statute he was put to his Writ of Right. 19 H. 4. 39.

And it appeareth by these Writs, that although he bring a Writ of a Disseisin made to himself, or of a Disseisin made to his Ancestors, that in both Cases the Writ shall be *Quod clamat esse jus & hereditatem suam*.

E And if Tenant for Life, or Tenant in Tail be disseised, they may sue a Writ of Disseisin *De quibus, &c.* but in that Writ it shall not be said, *which he claims to be his Right and his Inheritance*, and in his Count he shall set forth the especial Estate, &c. (a). 20 Ass. 2.

F And an Abbot, or Prior, or Master of an Hospital, or a Bishop, shall have a Writ *De quibus* upon a Disseisin of their Predecessors of Lands, Tenements, or Rent; and the Writ shall be such:

Command A. that justly, &c. be render to the Prior of N. one Messuage with the Appurtenances, which he claims to be the Right of the Church of him the said Prior of Saint Mary of N. &c. and into which the same A. hath not Entry but after the Disseisin, which L. unjustly and without Judgment thereof, made to R. some time Prior of N. Predecessor of the aforesaid Prior, after the first, &c. as it is said, whereof he complains, &c.

And if it be a Rent thus:

The King to the Sheriff, &c. Command I. M. that justly, &c. be render to the Prior of C. (b) three Shillings Rent, with the Appurtenances in D. which he claims to be the Right of the Church of him the said Prior of St. Nicolas of C. and of which W. D. unjustly and without Judgment, disseised W. some time Prior of C. aforesaid, &c.

G And the Aunt and the Niece shall join in the Writ, upon a Disseisin made to the Father of the one, the Grandfather of the other.

H And a Writ of *Entrie sur Disseisin* made unto his Ancestors of a Stream lieth, and the Writ shall be, *Præcipe quod reddat unum gurgitem*, and in his Count he shall alledge the Eplees in taking of Fishes. 13 Ed. 3.
Entry 57.

I And so he shall have a Writ of *Entrie in de quibus* upon the Disseisin of a Passage; *quod Vi. H. 8 Ed. 3.*

K (c) And if the Disseisor infeoff the King, who infeoffeth another in Fee, the Disseisee shall have a Writ of *Quibus* upon the Disseisin against the King's Feoffee in the *Post, &c.* 22 Ed. 3. 7.
Entry 11.
12 Ed. 3. 7.
23 Ed. 3. Fitz.
Entry 11.

A And if Tenant in Tail bring a Writ of *Quibus* upon a Disseisin made to himself, he may count that he was seised in his Demesne as of Freehold, without shewing any particular Estate, or how the Estate began, or he may count upon the special Matter, and shew the Gift in Tail; *quod Vi. P. 101.* [192.]
1 Ma. Dyer
33 H. 6.

B (d) And a Man may have a Writ of *Entrie of Quibus*, upon a Disseisin of a Common, *That he render, &c. Pasture for ten Sheep, &c.* which see *Easter 4 Ed. 3.*

(a) Note; The Writ, and also the Count shall be special; viz. that A. gave to B. for Life, Remainder to C. in Tail, whose Cousin and Heir D. aforesaid is; but he need not shew how Cousin and Heir, in the Count, 21 H. 6. 26. and see there, that the Writ shall be *de libero Tenemento*, though the Count be of an Estate-tail, or for Life. *Dyer 101.*

(b) *Tres solidi, &c.* It may be *Quod clamat, &c.* as agreeing with *Redditus*, or *Quos clamat*, and so refer to *solidos*. See 18 Ed. 2. *Brief 833.*

(c) But though the King ousts J. S. without Cause, and grants to B. J. S. shall not have a Writ of Entry.

(d) Viz. As Pernor, but not as Tenant of the Soil; but in that Case is put to his *Quod permittat.* 4 Ed. 2. *Brief 791, 793.*

14 H. 4. 10. (a) And a Man shall not have a Writ of *Entrie* in the *Post*, where he C
 Hankf. may have it within the Degrees, in the *Per*, or in the *Per* and *Cui*. See
 24 Ed. 3. 70. *West. i. cap. 40.*

Yet no Prac- If a Man disseise the Father of a Marsh, and maketh the same Meadow, D
 cipe will lie of a Marsh be- and the Father dieth, the Son and Heir shall have a Writ of *De quibus* upon
 a Marsh be- a Disseisin made to his Father of that Meadow, and by the Writ he shall
 cause properly it cannot be demand the Lands, by the Name of a Meadow, and not by the Name of
 rendered. Marsh (b).

13 Ed. 3. Br. demand. And so if it be Land covered with Water, and he is disseised thereof, and
 23. 39 H. 6. the Disseisor make it Meadow, the Disseisee shall have a Writ of *Quibus*, and
 8. by this Writ demand the Meadow, and suppose that he was disseised of
 v 39 H. 6. 8. Meadow by the Writ, &c. (c)

he shall have a And so if a Man be disseised of Land, and he build a House upon the
 Præcipe by the Name of a same, he shall suppose the Disseisin to be of a House, &c. *Quære* of this (d).
 House. And the Writ of *Quibus* upon Disseisin of an Office is such:

The King to the Sheriff, &c. Command H. Abbot of Peterborough that justly, E
&c. he render to B. the Office of Serjeant in the Abby of Peterborough, and the
Rent of twenty-four Loaves of Bread, forty Flaggons of Ale, and six Messes of
Meat with the Appurtenances, in the City of Peterborough, which he claims to
be his Right and Inheritance, and of which the same Abbot unjustly and without
Judgment hath disseised him, &c.

And he who cometh in unto any Land by (e) Recovery, or by Election, F
 or by Succession, or by Disseisin, the Writ shall be brought against such Per-
 son always in the *Post*.

(a) One may falsify the Degrees by Plea after
 a *Prece partium*. 14 H. 4. 39. F. *Brief* 248.

(b) 33 Ed. 3. *Entry* 40. 4 Ed. 3. 47. 4 Ed.
 3. *Feoffments* 79. 39 H. 6. 8. F. *Entry* 8.

(c) See *Trin.* 3 *Jac.* 1. B. R. *Rot.* 10.

(d) In Dower the Demand was of the third
 Part of two Mills, the Tenant pleads, that at
 the Day of the Writ purchased, they were two
 Tofts, and he was put to say, *and yet are*; tho'
 the Plaintiff had only said they are two Mills,
 and did not say that they were the Day of the
 Writ purchased; for it is sufficient for him if
 they were Mills at the Time of the Demand,
 and so in an Assise; *contra* in a *Præcipe*. See

1 H. 5. 11. 4 Co. 87. *Dyer* 47. 14 *Aff.* 12:
 See *Pascb.* 33 *Eliz.* *Rot.* 1308. *Hayes* and *Allen*;
 the Husband aliens the Wife's House, the Wife
 abates the House and builds a new one, whereof
 the side Walls stand on the Tenant's Land; yet
 the Wife, shall have a *Cui in vita* of the House,
 because it is a House at the Time of the Demand;
 yet she shall not recover the whole House. 33
 Ed. 3. *Entry* — 4 Ed. 3. *Feoffments* 79.

(e) See where a Recovery makes a Degree.
 5 Ed. 2. *Entry* 66. 7 Ed. 3. 62. *Cui in vita* 11.
 See 11 Ed. 3. *Entry* 56. where a Recovery
 against the Party shall not remit to the Degrees.

Writ of Dum fuit infra Ætatem.

G A Writ of *Dum fuit infra Ætatem* lieth, where an Infant maketh a Feoffment in Fee of his Lands, or for Life, or a Gift in Tail, when he cometh of full Age, he may have that Writ to recover those Lands or Tenements which were so aliened by him, &c. And within Age he may enter into the Land, and take it back again, and by his Entry he shall be remitted to his Ancestor's Right; but yet he shall not maintain that Writ until he be of full Age of twenty-one Years, for the Words of the Writ do so suppose, *While he was under Age*, by which it appeareth that he is not within Age at the Time of the Writ, &c. and also the Writ is such; *Who is of full Age, as he saith*, by which it appeareth that he ought to be of full Age (a), when that he bringeth that Writ; and the Writ is such:

The King to the Sheriff, &c. Command A. that, &c. he render to B. who is of full Age, as he saith, two Messuages, &c. which the same B. while he was under Age demised to him, as he saith, and unless he will do it, &c. (And so in the Per) Into which the same A. hath not Entry but by C. to whom the aforesaid B. demised them. (And in the Post, thus) Into which, &c. but after the Demise which the aforesaid B. while he was under Age thereof made to W. as it is said, and whereof he complains, and unless, &c. But that Clause, Who is of full Age, shall not be put in the Writs of Per, Cui or Post, but only in the first Writ, by Grant made by the Demandant to the Tenant.

I And if a Man bring this Writ upon the Alienation of his Ancestors, then this Clause, *Who is of full Age*, shall not be in the Writ, and yet the Infant shall have a *Dum fuit infra Ætatem* of a Seisin, and Alienation of his Ancestor during his Nonage; and the Writ shall be such:

Command A. that, &c. he render to B. one Messuage with the Appurtenances, &c. which he claims to be his Right, &c. and into which the same A. hath not Entry but by C. the Father (or other Ancestor of the said B.) whose Heir he is, who demised it to him while he was under Age; or thus, which he claims, &c. and into which, &c. but by C. to whom D. Grandmother of the aforesaid B. whose Heir he is, while the same D. was under Age, &c. (And in the Post) which he claims, &c. and into which, &c. after the Demise which D. the Aunt or Cousin of the aforesaid B. whose Heir he is, while she the same D. was under Age, thereof made to H. as it is said, and whereof he complains, &c.

K (b) And if two Infants be Jointenants, and they alien the Land during their Nonage, at their full Age they ought not to sue forth several Writs of *Dum*

(a) See 13 Ed. 3. *Dum fuit infra* 3. Where a *Dum fuit infra ætatem* was brought of Tenements in Gloucester, and the Defendant pleads that when one knew how to count twelve Pence, or to measure an Ell of Cloth, he might alien by the Custom of the Vill, and that the Plaintiff was of such an Age when he leased, that he knew how, &c. and because he did not set forth

the Age in certain as to the Number of Years, so that the Party might have joined Issue thereon, Judgment was given for the Demandant.

(b) See 18 Ed. 2. *Brief* 831. and if the Writ supposes an Entry into the Moiety by his Demise, where it was into the Whole, both the one Writ and the other is false. *N. Br.* 128, 141.

fuit

39 H. 6. 42.
In 46 Ed. 3.
34. A *Dum fuit infra ætatem* was admitted of a Rent, and yet by some the Gift is void; but the Delivery of the Deed is not void.
Post. 202.

34 H. 6. 3.
Davens ac.
19 H. 6.
Ac de cui in vita.

fuit infra Ætatem, because their Nonage is the Cause of the Action which is several, for the Nonage of the one is not the Nonage of the other, nor the Alienation of the one, the Alienation of the other.

See 14 Ed. 3. And if the Husband and Wife alien the Wife's Lands during the Nonage L. of the Husband and Wife, the Wife at her full Age, after the Death of the

Brief 282.

Husband, shall have *Dum fuit infra Ætatem* for such Alienation. M. 14 Ed. 3.

14 Ed. 3. *ibid.*

But if the Husband were of full Age, and the Wife within Age, and they both alien the Wife's Lands, and then the Husband dieth, it is a Question, whether the Wife shall have a *Dum fuit infra Ætatem* (a), and I conceive that she shall have a *Dum fuit infra Ætatem*, or a *Cui in vita*, as she pleaseth, for when they join in a Feoffment of the Land, it shall be said the Feoffment of the Wife, until she disagree; for if the Husband and Wife make a Gift in Tail, or a Lease for Life of the Wife's Lands rendring Rent, if the Husband dieth, the Reversion is only in the Wife, and she may accept the Rent, and the same shall bind her and her Heirs; and then if she will not accept the Rent, but, because she was within Age at the Time of the Feoffment, she will bring a *Dum fuit infra Ætatem*, it seemeth she shall not be received so to do; for by that Suit she affirmeth that she made the Feoffment, and then it shall not be said the Feoffment of the Husband only, but the Feoffment of the Wife alone after the Death of the Husband, if she affirm that to be her Feoffment; and by the *Dum fuit infra Ætatem* she doth affirm the same, and that she made the Feoffment during the Coverture; and on the other Side it may be said, that she doth not affirm the same to be a lawful Feoffment made by her. And also by the Feoffment of the Husband the Entry of the Wife shall be taken away; but by the Feoffment of the Wife during her Nonage, his Entry shall not be taken away; and therefore *quere* the Law, &c.

[193.]

* Writ of Cui in vita.

* This Writ is now out of Use, because by Stat. 32 H. 8. the Alienation of the Husband does not toll the Entry of the Wife.

THE Writ of *Cui in vita* lieth, where the Husband doth alien in Fee the A Right of Inheritance of his Wife, or the Freehold of his Wife by Feoffment, or Grant for Life, or in Tail: Then, after the Death of the Husband, the Wife shall have *Cui in vita contradicere non potuit*: And the Writ lieth, where the Wife hath an Estate for Life, or in Tail, and the Husband alieneth that Estate and Title of the Wife's, then the Wife after his Death shall have that Writ.

39 H. 6. 38. *Prif. contr.* Vide 16 H. 7. 8, 9.

(b) And if the Wife do not bring the Writ during her Life, then if she had an Estate in Fee-simple, her Heir shall have a Writ which is called *Sur cui in vita* after her Death. And if the Wife have an Estate in Tail, and her Husband alien, and make a Feoffment of that Estate; then if the Wife dieth, her Heir shall have a Writ of *Formedon* in the Descender to recover

(a) 14 Ed. 3. *Aid* 27. 21 H. 6. 24. 22 H. 6. 24. 7 Ed. 4. 7. *contra.* (b) 4 Eliz. 246. b. 46 Ed. 3. *Cui in vita* 23. 46 Ed. 3. *Age* 76.

that

that Estate, and not a Writ of *Sur cui in vita*; for those Writs of *Cui in vita*, and *Sur cui in vita*, are Writs founded upon the Common Law, and of an Estate in Fee-simple; for there was not other Estate at the Common Law which would descend, but a Fee-simple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without Heir, he shall have a Writ of Escheat.

- B** (a) And so by the Common Law, if a Man gives Lands to one and the Heirs of his Body, &c. if he dieth without Heirs of his Body, the Lord by the Common Law shall have a *Formedon* in the Reversion of that Estate for want of Issue of him to whom the Gift was made; but yet the Donor shall have an Estate in Fee-simple, as I think, and that appeareth by the Statute, which saith, *De tenement' quæ multoties dantur sub conditione*; by which Words it appeareth, that the Gift had a Condition implied therein; so that it shall revert for want of such Issue, and by reason of the Tenure reserved, &c. but it doth not appear by the Statute that he shall have an Estate-tail of other Nature than the Estate which was by the Common Law; and the Form of the Writ of *Cui in vita* is such:

A Feme sole made a Deed of Feoffment, but always after continued Seisin of the Land; after she took Hus-

band, who delivered the Land to the Party to whom the Deed was made; the Feme may have a *Cui in vita*; because she did not execute the Feoffment by Delivery of the Land. 34 Ed. 2. Fitz. *Cui in vita* 21. Flo. Com. 29 & 39. 12 Ed. 4. 3.

- C** *The King to the Sheriff, &c. Command A. that justly, &c. he render to B. who was the Wife of D. one Messuage with the Appurtenances in N. which (b) she claims to be her Right and Inheritance, and that the same A. hath not Entry but by the aforesaid D. some time the Husband of her the said B. who demised it to him, whom she in her Life-time could not contradict, as she saith.* N. Br. 137.

- D** And if she hold in Frank-marriage, and the Husband alien, then the Writ shall be, *Which she claims to be her Right and Marriage, and into which the same A. &c. but by C. to whom the aforesaid D. some time the Husband of her the said B. demised it, &c.*

- E** And this Writ of *Cui in vita* may be in the *Per*, *Cui* and *Post*, and in the *Post* the Writ shall be,

And into which the same A. hath not Entry but after the Demise which the aforesaid D. some time the Husband of her the said B. (c) (whom she in her Life-time could not contradict) thereof made, as it is said, and whereof she complains, &c. and unless, &c. or thus, which she claims to be her Right, of the Gift of S. who infeoffed her the said B. thereof, and into which, &c.

(a) 4 Eliz. 246. 46 Ed. 3. *Adjudged* 76.

(b) *Note*; If the Feme was in of a Fee-simple by Purchase, then the Writ shall be *Quod clamat esse Jus suum*; or *Quod clamat esse Jus suum de Dono*: And *note*; *Jus* is always intended a Fee-simple; yet it seems that in the Case of Purchase, *Quod clamat esse jus & hereditatem*, is not abateable, though properly *Hereditas* is intended by Descent, and not by Purchase in this Writ. 7 H. 4. 5. 30 H. 6. 38. *Quod clamat esse*

Jus & hereditatem suam, though it was by Purchase. 10 H. 6. 9.

(c) *Note*; If the Writ be in the Degrees the Words *Cui in vita*, &c. are put in the End; but if in the *Post*, in the Middle; and therefore if the Writ be, *Post dimissionem quam, &c. vir ipsus B. inde fecit cui ipsa, &c.* the Writ shall abate; for the Words relate to the next Antecedent. 16 Ed. 3. *Brief* 652.

11 Aff. 17. And if the Husband and Wife purchase jointly, and the Husband alieneth F
 Br. Aff. 167. all in Fee and dieth, the Wife shall have a Writ in this Form (a):
 16 H. 7. 8, 9. *Which she claims to be her Right of the Gift of I. who thereof infeoffed her*
 4 Ed. 3. 8. *the said B. and the aforesaid C. some time her Husband, and into which, &c.*
 39 H. 6. 38, &c.

And if she have an Estate to her and the Heirs of (b) her Body, and of the G
 Body of her Husband begotten, then the Writ is; *Which she claims to hold to*
her and the Heirs of her Body, and of the Body of the aforesaid D. some time her
 Note; The Statute of West. 2. c. 3. extends to give this Account, as well for Recovery before the Statute, as after.
 5 Ed. 2. Cui in vita 23.
 Or thus, *Which she claims to be her Right of the Demise which I. thereof made to the same B. and the aforesaid D. some time her Husband, and to the Heirs of her the said B.* And there the Husband shall have a joint Estate with the Wife for the Term of her Life.

And if the Wife claim the Lands in Dower, then the Writ shall be: II
Which she claims to be her Dower (c) of the Gift of D. her first Husband, or second Husband, and into which, &c. but by the said C. the second Husband of her the said B. or the third Husband, &c. who demised it to him, &c.

And if she hold for Term of Life of Dimission, then the Writ shall be,
Which she claims to hold for her Life of the Demise which I. thereof made to the same B. and to the aforesaid D. some time her Husband, for the Life of them the said B. and D.

And if the Husband and Wife lose by Default the Wife's Lands, after the I
 Death of the Husband she shall have a *Cui in vita* for to recover those Lands
 2 Ed. 4. 13. so lost by Default; but if a Man recover by a *Cessavit* Lands of the Wife by
 4 Ed. 2. Cui in vita 22. Default of the Husband and the Wife upon a *Cesser*, during the Marriage had
 20 H. 6. 28. betwixt them; if the Husband dieth, the Wife shall not have a *Cui in vita*
 11 Ed. 3. upon that Recovery; *quod vide Trin. 4 Ed. 2.*

If the Husband and Wife, and a third Person purchase jointly, and the K
 Husband alieneth all in Fee and dieth, the Wife, as it seemeth, shall have a
 11 Ed. 3. 9. *Cui in (d) vita* of a Moiety, being the third Jointenant; but it seemeth such
 36 Ed. 3. Cui in vita 2. Alienation is a Severance of the Jointure, *quod vide Pas. 16 Ed. 3. Cui in vita*

(a) If the Writ suppose *Ex Dono A. and B.* it is a good Plea, that *A.* did not give. 4 Ed. 2. Brief 795.

(b) 48 Ed. 3. 8. 16 H. 7. 8. 4 Ed. 2. Brief 795. *contr.* 22 Ed. 45. And Note; The Writ shall be in the same Form, tho' he be Tenant after Possibility, and not *quod clamat tenere* for his Life, *de Dono, &c.* 18 Ed. 3. 27.

(c) *Ex Dimissione I. qui inde seoffavit præd' B.* is good. 18 H. 6. 24.

(d) *Rex præcipe, &c. quæ clamat tenere ad vitam suam ex dimissione quam I. S. fecit eidem H. the Demandant, & prædicto B. her Husband, and C. Filio prædictor' H. and B. & hæredib' de corpore ipsius B. &c. in quam non habet Ingressum, si non per prædict' B. quondam virum ipsius H. qui illam ei dimisit Cui ipsam, &c. and held, 1.* That he need not alledge the Esplees but in

Person of the Demandant, and not in C. who does not claim from him. 2. It need not shew that C. is dead, but it shall come in by the Shewing of the Tenant; whereupon *Trewin* said, C. is in Life, and demanded Judgment of the Writ; but it seems to be only to the Action, and that only as to a Moiety, *per Shard.* For of a Moiety, it is a Disseisin to C. but this seems to be doubted; for by *Shard.* it has been seen, that the Feme and C. have joined in an Assise.

11 Ed. 3. Cui in vita 9. See 36 H. 6. Entry congeable 54. 36 Ed. 3. Cui in vita 20. where it is said, that the Feme shall not have a *Cui in vita* living C. because they may join in a Writ of Right; but *per Moret.* she shall have a *Cui in vita* of the Whole, and see 35 Aff. 13. If the Stranger survives, he may enter into the Wholes

L in the Abridgment: And if the Husband alien the Corody in Fee, which the Wife hath, it shall not be any Discontinuance, but the Wife may demand her Corody.

A If the Husband and Wife exchange the Land of the Wife for other Lands, [194.] if the Wife agree unto the Exchange, after the Husband's Death she shall not ^{9 Ed. 4. 16.}

B have a *Cui in vita*. And if the Wife do accept of the Parcel of the Land in Dower, of which she hath a *Cui in vita*, by that Acceptance she shall be barred in her *Cui in vita* of the Residue. ^{If the Husband and Wife lose by Default in Waite, no Cui in vita;}

the Reason is, because no Land is in Demand in, &c. Writ, 36 Ed. 3. She shall have a *Cui in vita* of no Part during the other's Life. 36 Ed. 3. She shall have a *Cui in vita*, that is, of a Purchase during the Coverture, that he shall not have a *Cui in vita* after the Death of the others; but for, &c. he may. 10 Ed. 4. 2.

2 Ed. 2. *Cui in vita* 19. 8 Ed. 2. *ibid.* 25.

8 Ed. 2. *Cui in vita* 28. The Husband gave the Land of the Wife to I. who gave other Land to the Husband and Wife, and to the Son of the Husband, and to the Heirs of him who survived, and that was pleaded by Exchange in Bar, in a *Cui in vita*; and holden in Bar. 20 Ed. 3. *Cui in vita* 10.

So if she accept a Rent where she and her Husband make a Feoffment. 21 H. 6. 24.

2 Ed. 2. *Cui in vita* 117. 8 Ed. 2. 28. Perk. 58. 4 Co. 5. b. 8 Ed. 3. 12. 10 Ed. 3. *Cui*, &c. 32.

If Husband and Wife be Jointenants before the Coverture, and the Husband alieneth all the Land, and dieth, she shall not have a *Cui in vita* but for a Moiety. But if they be Joint Purchasors during the Coverture, and he alien all the Land, and dieth, his Wife shall have a *Cui in vita* of the whole Land, because that during the Coverture as to Purchase, they are but one Person in Law. And the Writ of *Sur cui in vita* lieth for the Heir of the Wife, where the Husband alieneth all the Land in Fee; and the Writ is such: ^{19 H. 6. 45. 21 Ed. 2. 9. 17 Aff. 310. 17 Ed. 3. cont. where Acceptance is made, for she is remitted.}

Command A. that, &c. he render to B. one Messuage with the Appurtenances in N. which he claims to be his Right and Inheritance, and into which, &c. but by C. some time the Husband of D. Mother of the aforesaid B. whose Heir he is, who demised it to him, whom she the said D. in her Life-time could not contradict, as he saith; and unless, &c.

And in the *Per* and *Cui*, thus:

Which he claims, &c. and into which, &c. but by C. to whom D. some time the Husband of E. Aunt, Sister or Cousin of the aforesaid P. whose Heir he is, &c. demised it to him, whom she the said D. in her Life-time, &c.

And in the *Post* the Writ shall be thus:

But after the Demise which I. some time the Husband of C. Mother of the aforesaid B. and Aunt of the aforesaid M. whose Heir he is, whom the said C. in her Life-time could not contradict, thereof made, as he saith, and whercof he complains, &c. and unless, &c.

D And by that Writ appeareth, that the Aunt and the Niece may join in a Writ of *Sur cui in vita*, upon an Alienation made by the Husband, their common Ancestor; or upon a Recovery had against the Husband and Wife, who was the common Ancestor to them, if the second Husband alien the Lands of the Wife, and he and his Wife die, the Issue of the Wife and the first Husband shall have a *Sur cui in vita* against the Alienee; although the second Husband be living, if he were not intitled to be Tenant by the Cur-

Writ de fine assensu Capituli.

tesy; but if the second Husband be intituled to be Tenant by the Curtesy, then the Issue of the first Husband shall not have a *Sur cui in vita* during the E Life of the second Husband.

8 Ed. 2. And a *Sur cui in vita* was maintainable of a Rent, *M. 12 Ed. 3.* And in a F
Cui in vita 26. *Cui in vita* the Grant or Gift alledged in the Writ is not traversable. G
44 Ed. 1. If a Man giveth Lands to a Woman to marry her, and they marry, and H
Fitz. ib. 30. afterwards the Husband alieneth the Lands, and dieth, the Wife shall have a
5 Ed. 3. 37. *Cui in vita* of those Lands given her by her Husband.
Cui in vita 13.
49 Ed. 3. 20.
Quere. But 50 Ed. 3. 6. Act. 5 Ed. 2. Cui in vita 25.

Writ de fine assensu Capituli.

THE Writ of *Sine assensu Capit'* lieth, where a Dean, Bishop, Prebendary, I
Abbot, Prior, or Master of an Hospital, alien the Lands which they
have in the Right of their House, Abbey or Priory, without the Assent of
their Convent, or their Chapter or Brethren, &c. He who is the Successor
shall have that Writ, which is such, and may be in the *Per, Cui* or *Post* :

*The King to the Sheriff, &c. Command A. that, &c. he render to B. Bishop of K
S. one Messuage with the Appurtenances in N. which he claims to be the Right of
the Church of him the said Bishop of Saint Mary of S. and into which the said A.
hath not Entry but by H. to whom R. some time Bishop of S. the Predecessor of
the aforesaid now Bishop demised it, without the Assent and Will of his Chapter,
as he saith, &c.*

And for a Master of an Hospital the Writ shall be,

*The King to the Sheriff, &c. Command A. that justly, &c. he render to B.
Warden of the Hospital of Saint Mary Magdalen of Lincoln, one Messuage, &c.
which he claims to be the Right of his Hospital aforesaid, and into which the said
A. hath not Entry but by D. some time Warden of the Hospital aforesaid, who
demised it to him without the Assent and Will of the Brethren and Sisters of the
same Hospital, as he saith; and unless, &c.*

And for a Prebend the Form of the Writ is such :

*The King to the Sheriff, &c. Command A. that, &c. he render to B. Preben-
dary of the Prebend of D. in the Church of the blessed Peter of York, one Mes-
suage, &c. in A. which he claims to be the Right of his Prebend, and into which,
&c. but after the Demise which R. of B. lately Prebendary of the Prebend aforesaid,
Predecessor of the said Prebendary, without the Licence and Will of the
Archbishop of York and the Dean and Chapter of the Church aforesaid, thereof
made to W. of R. as he saith, and whereof he complains, &c.*

And for the Prior of Saint John of Jerusalem in England lieth a Writ upon
an Alienation of his Predecessor, thus :

*That he render to B. Prior of the Hospital of Saint John of Jerusalem in Eng-
land, &c. which he claims to be the Right of his Church of Saint John of Jeru-
salem in England, and into which he hath not Entry but by W. some time Prior
of Saint John, &c. Predecessor of the aforesaid now Prior, who demised it without
the Assent of the Chapter, as he saith; and unless, &c.*

And

And the Procefs in these Writs are Summons, Grand Cape and Petit Cape. ²¹ H. 6. 9.
L (a) And hereby it appeareth, that a Prebendary shall have a Writ *de fine assensu Capituli*; by which it seemeth that he hath a Fee-simple in the Prebend; and yet one Prebendary may enter upon the Alienation of his Predecessor.

And also a Prebendary shall have a *Juris utrum* upon an Alienation of his Predecessor, by which it seemeth he hath not a greater Estate than as Parson: But yet it seems (b) reasonable that he have this Writ *de fine assensu Capituli*; because that he, the Bishop, and the Chapter are but one Body, and are as one Body, although the Possessions be severed and divided among them; and every one of them is enabled to bring an Action of his own Possession in his own Name. [195.]

A And a Man may have a Writ of *fine assensu Capituli* against the same Person by several *Præcipes* in the Writ of Lands in several Towns, and upon Demises of his several Predecessors, and it shall be good; *quod vide H. 33 Ed. 3.*

B And if the Prebendary, or a Bishop, or Abbot be disseised, and afterwards he releaseth to the Disseisor; it seemeth the same is an Alienation upon which he may have a Writ *de fine assensu Capituli*; for if the Disseisor die seised after the Release made, the Successor hath not any Remedy but by this Writ, or by a Writ of Right; but if the Disseisor doth not die seised, then it seemeth the Successor may enter upon the Disseisor, notwithstanding the Release of his Predecessor, for by the Release no more passeth than he may rightfully release, &c.

Writ of Assise of Mortdauncestor.

C **T**HE Writ of Mortdauncestor lieth, where my Father or Mother, Brother or Sister, (c) Uncle or Aunt, or Nephew or Niece, dieth seised of any Lands, Tenements or Rents, or of a Corody or other Rents, as Hens or Capons, issuing out of other Lands of an Estate in Fee-simple: Now if a Stranger after their Deaths abate in that Land, Rent or Profit, I who am his Heir shall have this Writ of Assise of Mortdauncestor.

D And if the Ancestor were seised, the Day that he died, of any Lands or Rents, or other like Things, of an Estate in Fee-simple, although that a Stranger entereth and disseiseth him of that Land or Rents the Day that he dieth, so that he dieth not seised of the said Land or Rents, &c. yet I who am his Heir shall have that Assise of Mortdauncestor, because the Writ doth not suppose that my Ancestor died seised; but the Writ saith, *Ready to take Cognisance upon Oath, whether W. the Father, &c. was seised in his Demesne as of Fee, on the Day when he died, &c.* and the same is sufficient although he dieth not seised; and the Form of the Writ is such:

(a) See the contrary adjudged, *Dyer* 240. for Fee; and how the Writ shall be, see *Statham Provostship of Wells*. See 2 H. 4. 5. *Litt.* 145. *Tit. Prebend. Case 2.*

(b) In 3 Ed. 3. a Prebend had a Writ of Entry *sine assensu Capituli*, and the Writ was *non habuit Ingressum*, from whence it follows, it is a Lay

(c) And not Cofinage, for such Writ will abate, if of the Seisin of the Uncle.

Writ of Assise of Mortdauncestor.

The King to the Sheriff of S. greeting: If A. shall make you secure, &c. then E. summon, &c. twelve free and lawful Men of the Neighbourhood of N. that they be before our Justices at the first Assise, when they shall come into those Parts, or before our Justices at Westminster on the Oſtave of, &c. or before our beloved and faithful D. and E. and those whom we have associated unto them, at a certain Day and Place, whereof they the said D. and E. shall give you Notice, ready to recognize by Oath, if W. Father of the aforesaid A. or Mother, Sister, Brother, Uncle or Aunt, was seised in his (or her) Demesne as of Fee, of one Messuage and one Yard-land with the Appurtenances in N. the Day whereon he died, and if he died after the Coronation of Lord King Henry; (a) and if the same A. be his next Heir: And in the mean time let them view the said Messuage and Land, and cause their Names to be put in the Writ, and summon by good Summoners B. who now holds the aforesaid Messuage and Lands, that he may be there to hear that Recognizance; and have there the Summoners and this Writ. Witness, &c.

10 Ed. 2.

Formedon 55.

Plow. Com.

239. If a

Man hath Iſ-

sue a Son, and

his Wife di-

eth; and he

taketh another

Wife, and hath

Issue a Son, and

Lands are given

to him and his

second Wife in

special Tail;

before the Statute

De donis, if the

Stranger had

abated, no

Mortdauncestor

lieth.

And upon that Writ he needs not have any special Patent, for the general Patent made to the Justices shall serve for that Writ. And if the Writ be, *That he be before our beloved and faithful D. and E. and those whom we have associated unto them*, then they use to have a special Patent directed to the same Justices, &c. But if the Justices be the Justices of Assise in the same County, then their general Patent shall serve for that Assise, as well as if they had a special Patent; and the special Patent is such:

The King to his beloved and faithful D. and E. greeting: Know ye, that we have constituted you our Justices, together with those whom we have associated unto you, to take the Assise of Mortdauncestor which A. hath arraigned before you by our Writ, of one Messuage and one Yard-land in N. And therefore, &c. as in the Patent of Assise of Novel Disseisin.

30 Ass. 24.

Br. Attaint 72.

50 Ass. 4.

Br. Attaint 84.

And a Man may have an Assise of Mortdauncestor of several Rents against several Persons in several Counties, and in the End of the Writ shall be several Summons against the Tenants; and the Form of the Writ is such:

The King to the Sheriff, &c. If A. and B. shall make you secure, then summon twelve free, &c. ready to recognize by Oath, if W. Father of the aforesaid A. and Grandfather of the aforesaid B. was seised, &c. of ten Shillings Rent with the Appurtenances in N. and if he died, &c. and if they the said A. and B. are next, &c. and in the mean time let them view the Tenement from whence the Rent cometh, and cause their Names, &c. and summon by good Summoners S. who de-

13 H. 4. 17.

(a) See that in a Mortdauncestor by an Infant, of the Seisin of his Father or Mother, the Writ shall be good, tho' those Words are omitted; *contra* in a Writ of Ayle. 13 H. 4. 17. *Westm.* 1. c. 32. 30 *Ass.* 25. and see where these three Articles are to be inquired, *viz.* 1. If the Tenant pleads to the Writ and Vouches, and on such Dilatory they are at Issue, and found against

all, yet the Points of the Writ are to be inquired, *Et si petens deficit in uno cadit in omnibus.* 2. It seems, if the Dying seised be denied, yet the other Points shall be inquired, for this is no Plea in Bar. 3. If a Bar be pleaded, and found for the Plaintiff, there the Points of the Writ shall not be inquired. 17 *Ed.* 3. 28. 39 *Ass.* 13. 9 *Ass.* 3. 8 *Ass.* 17. *Dyer* 311.

forcetb

forceth them of six Shillings of the Rent, and T. who deforceth them of four Shillings of the Rent, that they may be then there, &c.

And by this Writ it appeareth, that the Aunt and the Niece shall join in Assise of Mortdauncestor, and that is by the Statute of Gloucester, cap. 6.

H (a) And if the Heir who bringeth Assise be within Age, he shall not find Pledges; and therefore the Form of the Writ shall be of another Form, and shall not say, *If A. shall make you, &c.* but thus:

The King to the Sheriff, &c. Summon, &c. twelve free and lawful Men, &c. if W. Father of the aforesaid A. who is under Age, as he saith, was seised, &c. And shall not say in the Writ, And if he died after the Coronation, &c. because it appeareth by the Age of the Demandant; but if many Sisters be Demandants, and some of them be within Age, and some of full Age, then the Writ shall be in the common Form, as if all were of full Age (b).

If a Man go beyond the Sea in Pilgrimage, and dieth there, his Heir shall [196.] have a Writ of Mortdauncestor of another Form, thus:

The King to the Sheriff, &c. If A. shall make you secure, &c. summon twelve, &c. if W. Father of the aforesaid A. was seised in his Demesne, &c. of the Rent of one Clove with the Appurtenances in N. the Day he took (c) his Pilgrimage towards the Holy Land, or towards Jerufalem, or towards Saint James, in which Journey he died, as it is said, and if he took that Journey after the Coronation of, &c.

A And in that Writ it sufficeth, if he were seised the Day he went out of the Land, and took the Sea, although it was not the Day of his Death. And if the Father enter into Religion, and be professed, the Son shall have a Mortdauncestor, if the Stranger abate in the Land; the Writ shall be, *Si W. Pater, &c. die quo habitum Religionis assumpsit, in quo habitu professus fuit, ut dicitur; & si habitum illum assumpsit post Coronationem, &c.* Post. 211. G.
3 Ed. 4. 3.
9 11. 5. 9.

B If a Man have a Corrody to him and his Heirs, if he die seised, or was seised thereof the Day of his Death, his Heir shall have an Assise of Mortdauncestor thereof, if it be taken from him; and the Writ shall be,

The King to the Sheriff, &c. If W. shall make you secure, &c. then summon, &c. twelve free, &c. of the Venue of the City of Westminster, that they be, &c. ready, &c. if L. Mother of the aforesaid W. was seised in her Demesne as of Fee of forty Shillings Rent, and of the Rent of sixty-two Loaves, three Flaggons of Wine, twenty Flaggons of Ale and thirty Messes of Meat, with the Appurtenances in the City of Westminster, the Day whereon he died; and if he died, &c. and if the said W. &c. and in the mean time let them view the Tenement from whence the Rent cometh, and summon, &c. T. Abbot of Westminster, and Friar R. of B. and Friar K. of S. Monks of the said Abbot, who deforce him of the Rent aforesaid, that they may be then there, &c.

C And the Order to set the Parcels in the Writ shall be as in a Writ of Right.

(a) Note; A Bill of Privilege is not *si fecerit te securum, &c.* and yet the Demandant shall find Pledges to prosecute, or else it is Error. Dyer 288. See 4 Inst. 150.

(b) 13 Ed. 3. pl. 677. 9 Ed. 2. Brief 852.

(c) And in such Case, if the Writ be in common Form, it shall abate, 9 Ed. 2. Mortdauncestor 852. but a Writ of Ayle or Cofnage shall be general in such Case. 13 Ed. 3. Brief 677.

And a Man shall have a Certificate upon this Writ, and also Writs of Affo- D
ciation, and *Si non omnes*, as he shall have in Assise of Novel Disseisin.

And by the Statute of *Gloucester*, if Tenant by the Curtesy alien his Wife's E
Inheritance, and dieth, the Heir of the Wife shall have an Assise of Mort-
dauncestor, if he have not Assets by Descent by the Tenant by the Curtesy,
and the same shall be as well where the Wife was not seised of the Land the
Day of her Death, as where she was seised thereof, for that Writ is given
by the Statute.

If the Lord have the Ward of the Heir of his Tenant, and when he cometh F
of full Age the Guardian will not suffer him to enter into the Land, the Heir
shall have an Assise of Mortdauncestor against the Guardian, by the Statute of
Marlebridge, cap. 16.

8 Aff. 13.
Br. Default
and Appur-
tenance 88.

And the Process in Mortdauncestor is Summons against the Party, and if G
he make Default at the Day of the Assise Return, then the Plaintiff ought to
sue a Resummons; and if he make Default again, the Assise shall be taken
by his Default.

(a) And if a Man vouch in Assise of Mortdauncestor, and at the first Day
the Vouchee make Default, then the Resummons shall issue forth against him:
And so if the (b) Tenant or Vouchee at the first Day be effoined; and after-
wards at the Day given by the Effoin, the Tenant or Vouchee make Default,
a Resummons shall be awarded. But if the Tenant at first Day be effoined,
as in the King's Service, and afterwards make Default at another Day, the
Assise shall be taken by his Default, &c.

And if the Writ of Mortdauncestor be brought by several Summons against H
several Tenants, then the Assise may be taken one against one Tenant, and
another against the other Tenant; *quod vide 3 Ed. 3. Itin. North.*

(c) And a Mortdauncestor doth not lie for Lands devisable by Will, be- I
cause the Title may fall to another, who is not Heir by the Will of the An-
cestor, &c. and yet the Writ is true, that he was seised the Day he died;
quod vide 23 Ed. 3. Lib. Ass.

33 Ed. 3.
Mortdaunce-
stor 33.
1 H. 3.
Mortdaunce-
stor 51.
7 H. 4. 23.

And if a Man be seised in Tail, the Remainder to his right Heirs, and af- K
terwards he die seised without Issue of his Body, and a Stranger abateth, it is
a Question if the Heir shall have an Assise of Mortdauncestor. And *Anno*
21 Ed. 3. Itin. Suff. M. 5 H. 4. the Opinion of some is, that if the Remain-
der be to his right Heirs, that then he shall not have an Assise of Mortdaun-
cestor: But if a Gift in Tail be made unto one, the Remainder to him and
his right Heirs, that then he shall have an Assise of Mortdauncestor, because
he hath the Remainder in Fee to him and his Heirs; But it seemeth he shall

(a) Where the Tenant vouched a Foreigner, 45 Ed. 3. 23. 4 H. 6. 23. 18 Ed. 4. 8. Note;
in order to remove the Plea, and the Vouchee was returned summoned, and made Default, the
Parol was remanded. 3 Aff. 10. 28 Aff. 29. It was a common Effoin, yet see 8 Aff. 13. a
Resummons granted, and see 22 Aff. 79.

(b) The Tenant was effoined at the Day, and 5 (c) *Rot. Parl. 21 Ed. 3. n. 47.* a Petition
afterward made Default, no Resummons was inde. 22 Aff. 78. For Land in *Burgo de Scarbo-*
but the Jury taken by Default. 10 Ed. 3. 7. rough. 35 Aff. 1. 40 Aff. 2.

not have an Affise of Mortdauncestor in the one Cafe nor in the other; for the Words of the Writ are, *If W. Father of, &c. was seised in his Demefne as of Fee the Day wherein he died*, and that he was not, for he was seised in Demefne as of Fee-tail, and not in Demefne as of Fee, and therefore the Jury cannot find that he was seised in his Demefne as of Fee, for of the Demefne he was seised in Tail. *Quere* of that.

L And if the Ancestor dieth seised, and hath two Sisters his Heirs, one of them shall not have an Affise of Mortdauncestor against the other, for this Writ lieth against Strangers, and not against Privies in Blood. 10 Ed. 3.
Darrein Pre-
sentment 13.

And so in Gavelkind, one Brother shall not have a Mortdauncestor against the other for the Privy of Blood, but he ought for to sue a *Nuper obiit* against his Brother, or one Sister against the other, &c.

And *H. 13 H. 3. Itin. Suff.* the youngest Brother had a Mortdauncestor against a Stranger, and shall recover where the eldest went beyond Sea, although he were not dead, because eighteen Years passed since the eldest went beyond the Seas.

(a) And *H. 13 Ed. 2.* it was adjudged accordingly, where the younger Brother recovered in Affise of Mortdauncestor, where the eldest went beyond the Sea, and was alive,

Writ of Nuper obiit.

A THE Writ of (b) *Nuper obiit* lieth, where the Grandfather, Father, Brother, Uncle or other Ancestors of the Demandant dieth seised of Lands, Tenements or Rents of an Estate in Fee-simple, and after their Death, one of the Heirs of the same Ancestor doth enter and deforce the Demandants; now he, or those who are so disseised, shall have that Writ against the (c) Coparcener; and that Writ lieth for one Coheir against the others, or for divers Coheirs against many, as the Cafe is, and it ought to be where the common Ancestor dieth seised of Land, &c. of an Estate in Fee-simple; for if one Sister do deforce another Sister of Land, whereof their Ancestor died seised of an Estate in Tail, her Sister shall have a Formedon against the Sister who deforced her, &c. and not a *Nuper obiit*. And the Form of the Writ is such: [197.]

B *The King to the Sheriff, &c. If A. and B. shall make you secure, &c. then summon, &c. C. that he be before our Justices at Westminster such a Day, &c.* 7 Ed. 3. 15.

(a) If my younger Brother enters after the Death of my Father, I shall (not) have a Mortdauncestor against him, nor any other Action but Entry, and if he disturb me, I may have an Affise. *Plow. 306. N. B. 109.*

(b) And it seems, that every Parcener ought to be named in the Writ, viz. Tenant or Demandant. *Trin. 16 Ed. 3.*

(c) And she shall have Judgment to hold in Severalty. *21 R. 2. Judgment 227.*

to shew wherefore she deforceth the aforesaid A. and B. (a) of their proportionable Part which falleth to them of the Inheritance which was W.'s of N. the Father, Mother, or other Ancestor of the aforesaid A. B. and C. whose Heirs they are, and who lately died, as it is said, &c. And have there the Summoners and this Writ, &c. Witnesses, &c.

And the Writ may be brought by an Aunt against her Sister and her Niece; and then the Writ shall be such:

The King to the Sheriff, &c. If A. and B. his Wife, shall make you secure, &c. then summon, &c. C. and D. that they be, &c. to shew wherefore they deforce the aforesaid A. and B. of the proportionable Part of her the said B. which falleth to her of the Inheritance which was E.'s in N. Mother of the aforesaid B. and C. and Great Grandmother of the aforesaid D. whose Heirs they are, and who lately died, as it is said: And have, &c.

Br. Entry con-
geable 122.
collects, that
the Stranger
gains nothing
of the Free-
hold by that
Entry; quod
nota.
7 H. 6. 8.

And that Writ lieth betwixt Coheirs in Gavelkind, as well as between Wo- C
men who are Coparceners; and if one Coparcener be deforced by another Co-
parcener and a Stranger, she shall have a *Nuper obiit* against the Coparcener,
and by the Rule in the Register, that Non-tenure shall not abate the Writ.
Vide supra L.

And also by the Rule in the Register, in a *Nuper obiit* Non-tenure of Par- D
cel of the Thing demanded shall not abate the Writ.

(b) And if two of the Coparceners enter after the Death of their Ancestor, E
and deforce the third Sister, and afterwards they make Partition betwixt them,
and then one of the two alieneth her Part unto a Stranger in Fee, yet the third
shall have a *Nuper obiit* against her two Sisters notwithstanding that Alienation,
and shall recover the third Part thereof, whereof the Coparcener who aliened
not was seised, &c.

And for to recover the third Part of the other Coparcener, which is in the
Hand of the Stranger, she ought to sue an Assise of (c) Mortdauncestor in her
Name, and in the Name of her other Coparceners, &c. or a Writ of Aiel, as
the Case is.

: 6 H. 7. 1.
per Keble, by
the Disclaimer
the Deman-
dant is put to
his Assise of
Mortdaunce-
stor; also he
is barred of
his Damages
in the *Nuper*
obiit.

(d) And if one Coparcener do infeoff a Stranger in Fee, and taketh back F
an Estate to him in Fee, or for Life, yet it seems a *Nuper obiit* lies against
him by the other Coparcener, if he do not disclaim in Blood, *M. 2 Ed. 2.* and
it seems reasonable. But *M. 21 Ed. 3.* and *M. 45 Ed. 3.* 7 H. 6. 8. it is holden
the contrary: But several Tenancy or Non-tenure is no good Plea in a *Nuper*
obiit for the Privity of Blood; but if he claim by Purchase, or disclaim in
the Blood, it is a good Plea.

And a *Nuper obiit* lieth betwixt Sisters of the Half-blood. G

(a) And therefore, if the Demandant is seised
of Part of the Lands descended, although they
lie in another Town, &c. the Writ shall abate.
4 Ed. 2. Age 117.

(b) Neither Non tenure nor several Tenancy
are Pleas in a *Nuper obiit*. 7 H. 6. 8.

(c) A. and B. bring a *Nuper obiit* against C.
D. and E. A. does not appear, C. and D. appear
by Attorney, and E. appears in Person, and says,

that he is the Villain of I. S. And by *Wilby*
and others, this shall abate the Writ, and the
Plaintiff shall be put to his *Mortdauncestor* against
I. S. and the others. 18 Ed. 3. 55. accordant.
15 Ed. 3. *Brief 322.*

(d) 11 H. 4. 23. 21 Ed. 3. *Nuper obiit 14.*
21 Ed. 3. 32. 45 Ed. 3. 19. 30 Ed. 1. *Nuper*
obiit 18.

- H** And if a *Nuper obiit* be brought of the Seisin of the Grandfather, Darrein Seisin in the Father is no Plea, without alledging a Dying seised in the Father, &c.
- I** A *Nuper obiit* lieth of the Seisin of the Great Grandfather.
- K** And the *Nuper obiit* ought to be brought by that Coparcener who is deforced, &c. against all the other Coparceners, although that some of them have nothing in the Tenancy.
- L** And it appeareth, *T. 4 Ed. 2.* that the *Nuper obiit* lieth of the Seisin of his Father, if the Father were seised the Day that he died, or the Day before, for that amounteth to a Dying seised, &c. 4 Ed. 2. Nuper obiit 10.
- M** And if one Sister hath Issue a Son, and dieth, and the Son doth infeof a Woman in Fee of all the Land, and afterwards marries her; the *Nuper obiit* doth not lie by the other Coparcener against the Husband and Wife; but there he may bring a Mortdaunceitor in his own Name, and in the Name of the Husband against the Husband and Wife. *Anno 18 Ed. 2. Itiner. Canc.* 8 Ed. 2. Nuper obiit 13.
- N** A Villain and his Wife shall not have a *Nuper obiit* against his Wife's Coparcener, because he is not enfranchised by the Marriage of one of the Coparceners which was one of his Lords, to whom he was Villain before. 16 H. 3. 5. Nuper obiit 17.
- O** And if the Father give Lands in Frank-marriage to his Sister, and dieth seised in Fee of other Lands, she shall not have a *Nuper obiit* against her Sister for the Lands in Fee-simple, unless she will put the Lands which were given in Marriage in Hotchpot, &c.
- P** A *Nuper obiit* lieth of a Corody.
- Q** And Voucher, and the View, do not lie in the *Nuper obiit*.
- R** And the Aunt and the Niece shall join in a *Nuper obiit* against the other Sister or Niece, &c.

Writ of Quare ejecit infra Terminum.

- S** **T**HE Writ *Quare ejecit infra Terminum* lieth, where a Man leaseth Lands unto another for Years, and after he entereth and maketh a Feoffment in Fee of the same Lands to a Stranger, or for Life; the Lessee shall have that Writ *Quare ejecit infra Terminum* against the Feoffee or Lessee for Life. 11 H. 6. 6.
- T** And in that Writ he shall recover his Term again, and his Damages also, if the Term be not ended; and if the Term be ended, he shall recover all his Damages. If the Term expire pendent the Writ, yet the Writ shall not abate. [198.]
- U** And the Procefs in that Writ is Summons, Attachment and Distress infinite, and not Procefs of Outlawry, because the Writ is not *Vi & Armis*; and the Form of the Writ appeareth after, &c.
- A** But this Writ of *Quare ejecit infra Terminum* was devised (as it is said) by a wise Man called *William Moreton*, and for this Cause: For if a Man lease Lands for Years, and after he oust his Lessee, and after he hath put him out, he make a Feoffment of the Land unto a Stranger in Fee; now the Lessee cannot have a Writ of *Ejectione firme* against him who is the Feoffee, because he did not put him out, for which in that Case the Lessee had no other Remedy

medy but to enter again into the Land. And if the Feoffee do then put him out, the Lessee may have against him an *Ejectione firmæ vi & armis* for the Wrong done him, and before Entry made by the Lessee, he had not Remedy against the Feoffee: And therefore by the Equity of the Statute of *West. c. 24.* (As often as hereafter it shall happen in the Chancery, that in one Case a Writ is found, and in the like Case falling under the same Law, and wanting the same Remedy, &c. let the Clerks of Chancery agree, &c.) and by reason of that Statute was this Writ devised.

21 Ed. 4. 10. But yet if the Lessor put out the Lessee, and presently make a Feoffment B
30. 1 H. 5. 4. in Fee, so as the Feoffee be Party or Privy to the Ouster of the Lessee, then
300. the Lessee shall have a Writ of *Ejectione firmæ vi & armis* against the Feoffee,
because he is Party to the Ouster, and to the Wrong done unto him; and the
Writ followeth:

The King to the Sheriff, &c. If A. shall make you secure, &c. then summon B. that he be, &c. to shew wherefore he desorceth the aforesaid A. of one Messuage with the Appurtenances in N. which C. demised to him for a Term which is not yet passed, within which Term the same C. sold that Messuage to the aforesaid B. by reason of which Sale he the said B. hath eieced the aforesaid A. from the Messuage aforesaid, as it is said: And have, &c.

And the like Writ lieth where the Son and Heir of the Lessor maketh a C
Feoffment, &c. and the Feoffee ousted the Lessee.

And if the Lessee granteth over his Term, and afterwards the Lessor ma- D
keth a Feoffment of the Land unto a Stranger in Fee; now the second Lessee
shall have that Writ, &c. and the Writ shall be,

Wherefore he desorceth the aforesaid B. of one Messuage, &c. which R. (to whom L. demised it for a Term which is not yet passed) demised to the same B. for the same Term, within which Term he the said L. sold that Messuage, &c.

And so if four let a House to A. for Years, who granteth over his Estate
to B. and afterwards two of the Lessors die, and the Survivor maketh a Feoff-
ment unto C. in Fee, B. shall have a *Quare eiecit infra Terminum* against the
said Feoffee, and the Writ shall recite the special Matter.

And if a Man do lease Land for Years, and a Lessor doth suffer a Recovery E
to be against him upon a feigned Title, who entereth, yet it seemeth the
Lessee shall have this Writ of *Quare eiecit infra Terminum, &c.* And the
Words of the Writ are, *By reason of which Sale;* and yet the same is not
properly a Sale, but those Words are but of Form. But before the Statute
of 21 H. 8. c. 15. it seemeth that the Tenant for Years could not have falsified
the Recovery had against his Lessor.

35 H. 8. 52. And if a Man lease Lands for a Term of Years, and afterwards dieth F
&c. without Heir, and the Lord by Escheat enter and puts out the Termor, it is
36 H. 8. 63. a Doubt whether he shall have a *Quare eiecit infra Terminum* against the Lord
L. H. 8. fol. 74. by Escheat; but it seemeth reasonable that he should have it.

5 H. 7. 7. 37. And so if the Villain leaseth Lands for Years, and after the Lord of the G
11 H. 6. 7. Villain enters, and puts out the Termor, the Lessee shall have that Writ. And
Babington. so if a Man lease Lands for Years, and afterwards a Stranger put out the
Lessee, and disseiseth the Lessor, and afterwards the Lessor releaseth unto him,
it seemeth the Lessee shall have the Writ *Quare, eiecit infra Terminum* against
the Disseisor, &c.

I And *Quare ejecit infra Terminum* lieth as well against the Lessor, as against his Feoffee; *quod vide H. 19 H. 6.* 21 Ed. 4. 30. contr.

K And it seemeth that the Sale supposed in the Writ is not traverfable, but only the Ejectment, &c. And if so, then it seemeth the Writ lieth against the Lord by Escheat, or against the Lord of the Villain who putteth out the Termor, &c. 46 Ed. 3. 4. contr. 18 Ed. 2. pl. 7.

But an *Ejectione firmæ* lieth against the Lord of the Villain, if he put the Termor out of his Lease made by his Villain, before Entry made by the Lord into the Land. And so an *Ejectione firmæ* lieth against the Lord by Escheat, if he oust the Termor of the Lease made by the Tenant, &c.

And for the Book of 19 H. 6. it appeareth that it is in the Election of the Lessee to sue a Writ of *Ejectione firmæ*, or a Writ of *Quare ejecit infra Terminum* against the Lessor or his Heir, or against the Lord by Escheat, or against the Lord of the Villain, if they put the Termor out of his Term, &c. Ant. F.

Writ of Ex gravi Querela.

L THE Writ of (a) *Ex gravi Querela* lieth, where a Man is seised of any Lands or Tenements in any City or Borough, or in Gavelkind; which Lands are devisable by Will Time out of Mind, &c. Now if one who had Lands or Tenements there, doth devise those Lands or Tenements unto another in Fee-simple or in Fee-tail, he to whom the Devise is made shall have this Writ of *Ex gravi Querela* for to execute that Devise. 1 Inst. 111. 2. Note, That if a Town hath paid 15. it is no ancient Town that may devise, If a Devise 4 & 5 Mar.

Per 40 Ass. 41. 39 Ass. Br. Ass. 355. This Writ is not incident to Lands devisable. *Quære*, of a Rent out of the Land devisable be within the Benefit of this Writ. 26 H. 8. &c. or 5, and Dyer 140.

M And if a Man do devise such Lands or Tenements unto one in Tail, the Remainder over in Fee unto a Stranger, if the Tenant in Tail enter and be seised by Force of the Intail, and afterwards dieth without Issue, he in the Remainder shall have such Writ of *Ex gravi Querela* to execute that Devise. Post. 200. b.

A And so if a Man devise Lands or Tenements unto one in Tail, and afterwards the Tenant in Tail dieth without Issue of his Body; the Heir of the Donor, or he who hath the Reversion of the Land, shall have the Writ of *Ex gravi Querela* in the Nature of a Formedon in the Reverter, to recontinue the Possession of the Land to him who hath the Reversion. And first for Land [199.]
B devised in Tail within the City of London; the Form of the Writ for the Heirs of the Devisee in Tail, is such:

The King to the Mayor and Sheriffs of London, greeting: We have received Information from the grievous Complaint of I. Daughter of E. and M. Sister of the same I. that whereas according to the Custom hitherto obtained and used in the same City, it is lawfull for every Citizen of the same City to devise his Tenements in

(a) And it seems, that this Writ does not lie without a special Custom, although by Custom, the Land be devisable. 39 Ass. 6. See *contra* 40 Ass. 41.

40 Aff. 41.
Br. Cailrum
38.

Locus imper-
fectus: See
the next Writ.

the same City by his Testament, as he may his Chattels by his last Will, to whomsoever he will, and S. some time a Citizen of the City aforesaid, by his Testament and last Will devised four Shops with the Appurtenances, being in the same City, or four Messuages and ten Shops with the Appurtenances, &c. to E. to have the same to him and the Heirs of his Body issuing, R. and S. his Wife, of two Messuages and three Shops thereof, and F. of three Shops thereof unjustly desorce the aforesaid I. and M. the Daughters and Heir of the said E. to the great Expence and Grievance of them the said I. and M. and contrary to the Will of the Testator aforesaid and against the Custom aforesaid; And because we will not have them the said I. and M. to be injured in this Matter, we command you, that having called before you the Parties aforesaid, and heard their Reasons thereon, and having inspected the Tenor of the Will aforesaid thereupon, you cause to be done to the same I. and M. full and speedy Justice thereupon, as of Right and according to the Custom aforesaid ought to be done, and hath hitherto in the like Case been accustomed to be done, or cause to be done to the same I. and M. in this Behalf due, speedy and compleat Justice, as, &c. Witness, &c.

And it appeareth by that Writ, that the King commandeth them to do according to the Custom of the City, or to do Justice to the Parties, by which it seemeth, that the Mayor upon that Writ shall award Procefs to summon the Party, who is Tenant of the Land, to appear at a certain Day to answer to the Plaintiff, in the Nature of a Summons in a *Præcipe quod reddat*; and when he cometh, the Plaintiff ought to shew the Testament, and to count upon the same, and to alledge Seisin of the Land in the Testator, and how that he devised the same to him. And that the Defendant then plead thereunto, or the Mayor and Sheriffs ought to proceed therein according to the Usage of the City. And that Writ may be sued against several Tenants; and when the Mayor ought to make several Precepts unto every Tenant: And if the Land be in another Borough, then the Writ shall be such:

The King to his Bailiffs of Great Yarmouth, greeting, &c. From the grievous Complaint, &c. (as above) that according to the Custom in the said Town hitherto, &c. it is lawful for every Burges of the same Town to devise his Tenements which he hath purchased to himself in the same Town by his Testament and last Will, &c. (as above). And N. a Burges of the same Town, devised one Messuage with the Appurtenances (which he purchased to himself in the same Town) by his Testament and last Will, to W. and his Heirs, R. of F. entered into the Messuage aforesaid after the Death of the aforesaid N. and unjustly desorces the said W. of it, to the great Expence, &c. of him the said W. &c. (as above) and because we will not, &c. (as above).

Foß. 201.

And if a Man deviseth his Lands to his Wife for Life, the Remainder F over to another in Fee, and the Tenant for Life entereth, and is seised by force of the Devise and dieth, and he in the Remainder is desorced, he shall have such Writ:

From the grievous Complaint, &c. (until) to whomsoever they will; and M. some time a Citizen of the same City, devised to D. his Wife in his Testament in his last Will, four Shops with the Appurtenances in I. which he purchased to himself in the same City, to have the same for the Life of her the said D. so that after the Death of the same D. the aforesaid Shops with the Appurtenances should remain to the aforesaid E. and his Heirs, N. who holds these Shops of the Demise

of

of the aforesaid D. unjustly deforced the aforesaid E. of them after the Death of the same D. to the great Expence, &c. of him the said E. &c.

G And if a Man do devise Lands by his Testament in Tail, the Remainder over in Tail unto another, and the first Tenant in Tail entereth, and dieth without Issue; and the second Tenant in Tail entereth in his Remainder, and dieth without Issue, the Heir of the Donor shall have a Writ of *Ex gravi Querela* in this Form:

From the grievous Complaint, &c. (as above) and I. P. some time a Citizen of the City aforesaid, Father of the aforesaid S. whose Heir he is, demised one Messuage with the Appurtenances in the Suburbs of London, to have the same to M. Son of him the said I. and to the Heirs of the Body of him the said M. lawfully to be begotten; so that if the same M. should die without Heirs of his Body lawfully begotten, the aforesaid Messuage, &c. should remain to R. Son of the aforesaid I. and the Heirs of the Body of the aforesaid R. lawfully begotten; L. Chaplain of the Chantry at the Altar of Saint John in the new Work in the Church of Saint Paul, London, for the Soul of Majster W. some time of the Order of Canons of the same Church, after the Death of the aforesaid M. and R. unjustly deforced the aforesaid S. (of the said Messuage aforesaid with the Appurtenances) to whom the same Messuage with the Appurtenances ought to revert, because both M. and R. died without Heirs of their Bodies lawfully begotten, as it is said, to the great Expence, &c. of him the said S. &c.

H And it appeareth by the subsequent Writ, that when a Man doth make a Devise of his Lands in London, and also of his Goods, and makes Executors, &c. then the first Executors shall prove the same before the Ordinary; and then after they shall bring the same before the Mayor into London, &c. and it shall be there inrolled, and then upon that Inrolment the Mayor, upon the Writ of *Ex gravi Querela* sued for the Lands, shall do Execution, and such Process as upon a Fine of Lands, &c. and the Writ is such:

The King to the Mayor and Sheriffs of London, greeting: Whereas, as we have received Information, according to the Custom in the same City hitherto obtained and approved, Testaments in which lay Tenements in the said City are devised (Proof being first made of the same Testaments before the Ordinary for the Goods and Chattels devised in the same) ought to be approved and inrolled before you in our Hustling of London, for the making Execution of the Tenements so devised. And now from the Relation of R. Cousin of I. of P. lately Citizen of London, we have received Information, that although the aforesaid I. hath devised one Shop and two Sillers with the Appurtenances in the Parish of Saint Michael, London, in the same City, in his Testament in his last Will to the aforesaid R. to have and to hold to him and his Heirs for ever; and the same Will, as the Custom is, is proved before the Ordinary, yet E. who was the Wife of I. of P. and A. Executor of the Testament of the same I. detain that Will in their Power, not suffering it to be inrolled in the Hustling aforesaid, as before is said, in manifest Danger of the Dishonour of him the said R. and contrary to the Custom aforesaid; We being unwilling that the said R. should be injured in this Behalf, command you, that having called before you the aforesaid Executor, and having heard the Reasons as well of the aforesaid R. as of the said Executor, you further do in the Premises that which of Right and according to the Custom of the City aforesaid ought to be done, and hath hitherto in the like Case been there accustomed to be done.

[200.]

And

And by that Writ it appeareth, that if a Man have Lands devised unto him in *London* by Will, he shall have a Writ unto the Mayor, to compel the Executors to bring in the same to be proved before them in *London*, and inrolled in the Hustings.

And if a Man have Lands devised unto him in *Oxford*, the Custom is, that A
the Testament shall be proved there before the Ordinary, and afterwards it shall be proved before the Mayor of *Oxford*, &c. And if the Mayor will not prove the Will, then he to whom the Devise is made, and also the Executors, who took any Advantage of Administration by that Will, shall have a Writ out of the Chancery directed unto the Mayor and Bailiffs, commanding them to prove the Will, and thereupon they shall have an *Alias* and a *Pluries*, *vel Causam nobis significes*, &c. and afterwards an Attachment against them, if need be, returnable in the King's Bench or Common Pleas.

Post. B.

And by the same Reason he shall have the like Writ against the Mayor of *London* to prove such Will, and to inrol the same, and upon that an *Alias* and *Pluries* against the Mayor of *London*, and Attachment, if need be.

And by the same Reason it seemeth reasonable, that a Man shall have a Writ directed to the Ordinary to prove the Will of any Man, &c. and the Form of the Writ is such :

The King to the Mayor and Bailiffs of the City of Oxford, greeting: We have received the Complaint of T. and M. his Wife containing, that whereas according to the Custom used and hitherto approved in the City aforesaid, the Wills of Burgesses of the City aforesaid there deceasing, of Tenements and Possessions, (if they be there devised) ought to be proved firstly before the Ordinary, and secondly before you in the Court of the City aforesaid, and in Times past have been used so to be; and the Executors of the Testament of N. with the aforesaid T. and M. after the Will of the said N. was proved before the Ordinary of the City aforesaid, (as the Custom is) have ostentimes brought it before you to be again proved according to the Custom aforesaid, by reason of certain Tenements in the Suburbs of the same City which the aforesaid N. in his last Will hath devised to the same M. as in the said Testament it is more fully contained; nevertheless you have hitherto refused and yet unjustly refuse to receive that Proceſs, by which neither the Executors aforesaid, nor the said T. and M. can obtain Administration upon the Tenements aforesaid, or other Tenements devised by the aforesaid N. in Delay of the Execution of the Testament aforesaid, and against the Will of the aforesaid N. and also to the great Damage and Grievance of them the said T. and M. and the Executors aforesaid: We being unwilling that the said T. and M. and the Executors aforesaid should be injured in this Behalf, command you, as we have heretofore commanded you, (if it is so) that then you cause to be done to the aforesaid Executors and T. and M. full and speedy Justice in this Behalf, as of Right and according to the Custom aforesaid ought to be done in the like Case, so that repeated Complaint thereof may not come to us, or signify to us Cause why our Commands, &c. Witness, &c.

And it is reasonable that it be so done in every other City, where Lands be B
devisable by Will, and are devised by Will, that the Executors and the Devisee shall have such Actions against the Ordinary, and also against the Bailiffs of the Town and Boroughs, to prove such Wills.

And in Place of a Formedon in the Descender in Tenements devised, is such Writ :

And A. some time Citizen of, &c. devised to M. his Daughter, a certain Messuage, &c. to have the same to her and the Heirs of her Body issuing, T. entered the said Messuage after the Death of the aforesaid M. and of W. the Son and Heir of the same M. and hath unjustly deformed L. the Brother and Heir of the aforesaid W. to his, &c.

And it seemeth, that when the Tail is once excepted before of the Devise in the Tenant in Tail, or in the Tenant for Term of Life, that then he (a) in the Remainder, or Heir of Tenant in Tail, have a Formedon in the Descender by the Course of the Common Law, after the Statute of *Westm. 2.* according to the common Form upon a Gift made in Tail by Deed.

C And there is another Form of Writ in the Register in Nature of a Formedon in the Descender.

A And if a Man in *London* devise Land unto a Woman for Term of her Life, and afterwards to her Executors to sell, and to convert the Money to her own Use, by the Custom of *London* that Testament ought to be proved before the Ordinary, and afterwards before the Mayor, &c. and to be inrolled, &c. [201.]

B If the Testament be proved before the Ordinary, and afterwards one Executor doth detain the same, and will not prove it before the Mayor, &c. the other Executor shall have a special Writ directed unto the Mayor and Sheriffs of *London*, commanding them to call the Executors before them, and to see the Testament, &c. and to do Right according to the Custom of the City, and according to the Law, &c. which Writ appeareth in the Register.

C And if a Man doth devise Lands to his Wife for the Term of her Life, upon Condition that if she marry, that the Lands shall remain unto his Son in Tail; and for Default of such Issue, the Remainder to the right Heirs of the Donor in Fee: Now if the Wife taketh a Husband who occupieth the Lands, and he in the Remainder dieth without Heir of his Body; the right Heir of the Donor shall have a special Writ of *Ex gravi Querela* directed unto the Mayor and Sheriffs of *London*, reciting that special Devise and the Matter as it is, commanding them to call the Parties, and to hear them, and to do Right, &c. And by that it appeareth, that he in the Remainder shall have Advantage of the Condition, if it be broken; but the same shall be by way of Action, and not by Entry, for the Condition not performed, which Writ appeareth in the Register (b).

(a) See 34 *Ed. 3.* *Formedon* 65. For a Formedon in Remainder does not lie without alleging Esplees in the particular Tenant. *Dyer* 140. b.

(b) See 43 *Ed. 3.* *Formedon* 68. 4 *Ed. 6.* 27. 30 *Aff.* 47. 9 *Aff.* 17. 8 *H. 8.* 32. 1 *Infl.* 214. b. *Litt.* 164.

2 & 3 *Ma.*
Dyer.
10 *Co.* 41.
Vide *Perkins*
164. That he
in the Remain-
der shall not
take Benefit of
the Condition
by way of
Entry.

Writ of Entre ad Terminum qui præteriit.

A Writ of *Entre ad Terminum qui præteriit* lieth, where a Man leaseth Lands D or Tenements for Term of Life or Years, and afterwards the (a) Term expireth, and he to whom the Lease was made, or a Stranger, entereth upon the Lands, and occupieth the same, and deforceth the Lessor, the Lessor or his Heirs shall have the Writ.

21 Ed. 3.
Brief 308.
One brought
the Writ upon
a Lease by his
Tresaire.

And that Writ lieth in the *Per*, *Cui* and *Post*: For if the Lessee hold over E his Term, and afterwards maketh a Feoffment, the Lessor or his Heirs may have that Writ against the Feoffee in the *Per*; and if the Feoffor maketh a Feoffment over, he may have it against the second Feoffee in the *Per* and *Cui*, and against the third Feoffee in the *Post*; and the Form of the Writ is such:

The King to the Sheriff, &c. Command A. that he render to B. one Water Gulf, &c. into which the same A. hath not Entry but by C. to whom the aforesaid B. demised it for a Term which is past, &c. and unless he will do it, &c. and the aforesaid B. shall make you secure, &c.

And in the *Post* the Writ is, *And into which the same A. hath not Entry but after the Demise which the same B. thereof made to D. for a Term which is past, and which after that Term ought to revert to the aforesaid B. as he saith, and whereof he complains that the aforesaid A. unjustly deforceth him, &c. and unless, &c.*

And by these Words, *Unde queritur*, in any Writ of Entry in the *Per* and *Cui*, but only in a Writ of Entry in the *Post*.

But if a Man will bring a Writ of Entry *ad Terminum qui præteriit* of his F Father, Mother or other Ancestor then there behoveth to be in the Writ the Words, *Which he claims to be his Right and Inheritance*; and the Form of the Writ is such:

The King to the Sberiff, &c. Command A. that, &c. he render to B. one Messuage with the Appurtenances in N. which he claims to be his Right and Inheritance, and into which the same A. hath not Entry but by D. the Father (or Mother or other Ancestor) of the aforesaid B. whose Heir he is, who demised it to him for a Term which is past, as he says, and unless he will do it, &c.

And in the *Per* and *Cui*, thus: *Which he claims, &c. and into which, &c. but by C. to whom D. (b) the Father (or other Ancestors) of the aforesaid B. whose Heir he is, demised it for a Term which is past, &c.* And in the *Post* thus: *But after the Demise which R. and the aforesaid B. &c. whose Heir they are, &c. or thus, which C. Father of the aforesaid B. and Grandfather of the aforesaid S. whose Heirs they are, thereof made to H. for that Term which is past, and which after that Term ought to revert to the aforesaid, &c. as they say, and whereof they complain that the aforesaid A. unjustly deforceth them, &c. unless, &c.*

And in every Writ of Entry which a Man demandeth of the Possession of his Ancestor, he ought to have these Words in the Writ, *Which he claims to*

(a) *Viz.* By Efflux of Time or Surrender.
Dyer 178.

(b) *Consanguineus*; and it appeared by the Count that he was Great Grandfather. 21 Ed. 3. 52.

be his Right and Inheritance, &c. but of his own Possession he shall not have those Words in the Writ, but only in a *Cui in vita* brought by a Woman of her Inheritance aliened by her Husband, for there she shall have in her Writ these Words, *Which he claims to be his Right and Inheritance, &c.* but the same is where the Woman claimeth an Estate in Fee-simple by the Writ; for if she claim but an Estate in Tail, or a Freehold by her *Cui in vita*, then the Writ of *Cui in vita* shall make a special Mention of that Estate, &c.

G. If a Man lease a Manor for Life or Years, unto which an Advowson is appendant, and afterwards the Lessee doth make a Feoffment of the Manor in Fee, and taketh back an Estate of the Manor, except the Advowson, to him for Life; if the Lessor bring the Writ of Entry *Ad Terminum qui præteriit* of the Manor against the Lessee, and doth not make Exception of the Advowson, the Writ shall abate for Non-tenure of the Advowson upon the Matter shewed, as appeareth by the Register.

H The Aunt and the Niece shall join in this Writ of *Ad Terminum qui præteriit*, as appeareth by a Writ before mentioned.

And if a Man maketh a Feoffment in Fee upon Condition, that if he pay a certain Sum of Money at a certain Day to the Feoffee or his Heirs, that then he shall have the Land again, and that he may enter, if he pay the Money at the Day, and afterwards the Feoffee will not suffer him for to enter: The Feoffor shall have the Writ of *Ad Terminum qui præteriit*, because that when he payeth the Money, the other hath no Term in Effect; and if he should not have this Writ, he could not have any Remedy but to enter, &c. and thereupon to have an Assise.

33 Aff. 11.
Vide Theol-
wall 131,
132, 228.
8 Ed. 3.
Entre 4.
V. 14 H. 8. 10.
Brock.

And *M. 5 Ed. 3.* it was adjudged that the Plaintiff should recover in such Action upon such Matter pleaded and shewed; but I do not perceive how the same could be maintained by Reason, because the Fee-simple is not properly said a Term; for then the Lord by Escheat should have a Writ of *Ad Terminum qui præteriit*, if his Tenant dieth without Heir, where he cannot have a Writ of Escheat; and in *Ad Terminum qui præteriit* the Lease alledged in the Count is traversable.

[202.]

A If the Husband and Wife lease the Wife's Lands for Years, and the Husband dieth, and the Termor holdeth over his Term, the Wife shall have a Writ of *Ad Terminum qui præteriit*, if she will, &c. but she ought for to count that she and her Husband leased the Land, &c.

V. 50 Ed. 3. 17.

B And it appeareth in *8 Ed. 2. Itin. Canc.* that the Grantee in Reversion shall have a Writ of *Ad Terminum qui præteriit* against the Lessee, or his Heir or Assignee, and yet there is no such Writ in the Register.

Writ of Dum fuit non Compos Mentis.

4 Co. Bever-
ley's Case.
1 Inst. 247.

THE (a) Writ of *Dum fuit non Compos Mentis*, lieth where a Man, who C
is not of *sane memoire*, alieneth his Lands or Tenements in Fee-simple or
in Fee-tail, for Life or for Years, if he be afterwards deforced by his Alienee
or Lessee, then he himself shall have this Writ against his Alienee or Lessee,
notwithstanding this own Alienation, or his own Lease; and the same appear-
eth by Writs in the Register, which are of such Form:

*The King to the Sberiff, &c. Command A. that he render to B. one Messuage
and twenty Acres of Land with the Appurtenances, which the same B. demised to
him, while he was not Sound of his Mind, as he saith, and unless he will do it,
&c. Or thus: Into which the same A. hath not Entry but by C. to whom the
aforesaid B. demised it, while he was not sound of his Mind, &c. Or thus in the
Post: Into which the same A. hath not Entry, but by the Demise which the
aforesaid B. while he was not sound of his Mind, thereof made to D. and whereof
he complains, &c.*

And some have said, that Writ lieth not by him who alieneth the Land, D
because he shall not disable himself, nor contradict his own Deed; but that
seemeth to be little Reason, for this is an Infirmity which cometh by the Act
of God; and it standeth with Reason, that a Man should shew how he was
visited by the Act of God with Infirmity, by which he lost his Memory and
Discretion for a Time; as if an Infant within the Age of twenty-one Years
doth make a Feoffment in Fee, or a Lease for Years, he himself shall avoid
his Feoffment or Lease, as well within Age as of full Age, although he shall
not have a *Dum fuit infra etatem* within Age, because the Writ doth suppose
him to be of full Age; but an Infant of the Age of fourteen Years hath Dis-
cretion, as hath been adjudged, at such Age; and if he at such Age commit
Felony, he shall be hanged for the same, and yet his Feoffment, Lease or
Grant, shall not bind him before the Age of twenty-one Years; because he
hath not perfect Discretion or Knowledge what he ought to do, or what is
to his Profit or Disadvantage before such Age; and therefore he shall alledge,
that he was within Age at the Time of the Feoffment, Grant or Lease made
by him; by which it appeareth, that he shall alledge, that he had not perfect
Discretion at that Time, for that Nonage is an Infirmity of Nature, and
cometh by the Act of God; and *a fortiori* then he who is of *non sane me-
moire*, shall alledge, that he was not of *sane memoire* at the Time of his Feoff-
ment or Grant; for he who is of unsound Memory, hath not any Manner
of Discretion; for if he kill a Man, it shall not be Felony, nor Murder, nor
he shall not forfeit his Lands or Goods for the same, because it appeareth
that he hath not Discretion; for if he had Discretion he should be hanged
for the same, as an Infant who is of the Age of Discretion, who commiteth
Murder or Felony, shall be hanged for the same.

Litt. 97. con.
39 H. 6. 42.
contra.
3 Aff. pl. 10.
con.
9 H. 6. 6.
Britton. Tit.
Debt 66.
Bro. Dum
fuit, &c. 5, 9.
N. Br. 126.
3 H. 7. 1.

Plow. Com.
19. a.
21 H. 7. 32.
26 Aff. 27.
5 Ed. 3. Con.
24. contra.
4 Ed. 3. 19. a.

(a) The Issue in Tail shall not have a *Dum fuit non Compos* on the Alienation of his Ancestor,
but a Formedon. 18 Ed. 3. 31.

And it appeareth in *Britton*, that in Debt upon a Bond, the Defendant said, that he was not of *Sane memoria* at the Time of making the Bond, and holden that it was a good Plea.

E And if an Ideot doth release all his Right by Deed, yet if it be afterwards found by Office that he is an Ideot, the King shall seize the Land, and the Release shall not bind, &c. *Quod vide* in Title *Scire facias*, P. 32 *Ed. 3.* in the Abridgments. Stanford
Prærog. 34.
50 Aff. 2. con.

(a) But in the Book of Assises, *Anno 35 Ed. 3.* the Tenant in an Assise pleaded the Release of the Plaintiff, and the Plaintiff said, that he was not then of *sane memoire*, &c. And there the Opinion of two Justices was, that he should not have that Plea; but I do not much regard their Opinion for the Reasons aforesaid.

F And it appeareth in *7 Henry 4. 5.* That a Feoffment of an Ideot made by Letter of Attorney is void, and so it seemeth to be of a Man of *Non sane memoire*. Dum non
Compos Men-
tis was brought
of the Aliena-
tion by a Son,
and admitted;
18 Ed. 3.
Sci. fac. 10.
12 Ed. 4. 6.
39 H. 6. 42.
[203.]

(b) And if a Man of *Non sane memoire* alieneth his Land in Fee and dieth, his Heir shall have such Writ as he may enter, as his Ancestors might have entred, as well as if an Infant within Age had aliened his Lands, &c.

And in *25 Ed. 3.* in the Book of Assises, a Man of *Non sane memoria* made a Feoffment in Fee, and took back an Estate to himself for Life, and there it was agreed and admitted, that the same was a Remitter, and (c) thereupon Issue was taken, that he was of perfect Memory, &c. and that was found by Verdict; which see in the Title of *Feoffments* in the Abridgments.

B And the Writ for the Heir upon the Alienation of his Ancestors shall be in such Form:

The King to the Sberiff, &c. Command A. that, &c. he render to B. twenty Acres of Land with the Appurtenances in N. which he claims to be his Right and Inheritance, and into which the same A. hath not Entry but by C. or other Ancestor of the aforesaid B. whose Heir he is, who demised them to him, while he the same C. was not sound of his Mind, as he saith, &c.

And thus in the *Per* and *Cui*:

Which he claims, &c. and into which, &c. but by C. to whom D. the Grandfather of the aforesaid B. (or other Ancestor of the aforesaid B.) whose Heir he is demised them, while he the same D. was not sound of his Mind, &c.

Or thus in the *Post*:

Which he claims, &c. and into which, &c. but after the Demise which C. the Great Grandfather (or other Ancestor of the aforesaid B.) whose Heir he is, while he the same C. &c. thereof made, as he saith, and whereof he complains,

C And *14 An.* of the King was such Writ granted:

D *Command R. that, &c. he render to B. one Rent of three Loaves of Bread, seven Flaggons of Ale, and seven Messes of Meate by the Week, with the Appurtenances in C. and which he the same B. demised to him, while he was not sound of his Mind, as he saith, and unless, &c.* And the Proceſs is *Grand Cape* and *Petit Cape*, as in other *Precipes quod reddat*.

(a) *F. Scire facias* 106. 18 *Ed. 3. ibid.* 10.

(b) *7 H. 4. 5.* So that the Land shall escheat notwithstanding the Feoffment. *4 Co. Beverley's Case.*

(c) But note; The Issue found that he was remitted. *25 Aff. 4.* See *17 Ed. 3. 7.* or *70.* See *Bro. Feoffment de Terr' 26. F. Remitter 23.* It is not admitted to be a Remitter.

Writ of Intrusion.

THE Writ of Intrusion lieth, where Tenant for Life, or in Dower, or by **E** the Curtesy, (a) dieth seised of such Estate for Life, and after their Death a Stranger doth intrude upon the Land, he in the Reversion shall have that Writ against the Intruder, and the Writ shall be such:

The King to the Sberiff, &c. Command A. that justly, &c. he render to B. one F Ploughland with the Appurtenances in N. which he claims to be his Right and Inheritance, and into which the same A. hath not Entry (b) but by the Intrusion which he made into it after the Death of C. who was the Wife of D. who held it in Dower of the Gift of the aforesaid D. sometime her Husband, the Father or Brother of the aforesaid B. whose Heir he is, as he saith, and unless, &c.

And in the *Per* thus:

And into which the same A. hath not Entry but by C. who demised it after the Death of D. who was the Wife of E. who held it in Dower, of the Gift of the aforesaid E. sometime her Husband.

And in the *Per* and *Cui* thus:

And into which the same A. hath not Entry but by C. to whom D. demised it, who intruded himself into it after the Death of, &c.

And in the *Post* the Writ is thus:

Into which the same A. hath not Entry but by the Intrusion which C. made into it after the Death of D. who was the Wife of E. who held it in Dower of the Gift of the aforesaid E. sometime her Husband, Brother of the aforesaid B. whose Heir he is, and which after the Death of the aforesaid D. ought to revert to the aforesaid B. as he saith, and whereof he complains, &c. and unless, &c.

And so that Word, *Et unde queritur* was put in every Writ of Entry in the *Post*.

And if a Woman recover Dower against him in the Reversion, or against **G** his Heir, and afterwards she died seised of that Estate, and a Stranger doth intrude into the Land, then he in the Reversion shall have a Writ of Intrusion. And in the Writ mention shall be made of the Recovery thus, *And into which the same A. hath not Entry but by the Intrusion which he made into it, after the Death of C. who was the Wife of D. who recovered it in our Court, before our Justices at W. by our Writ, by the Consideration of the same Court, as her Dower which fell to her of the Freehold, which was of the aforesaid D. sometime her Husband in the same Town, against the aforesaid B. or thus: against W. the Father, or other Ancestor of the aforesaid B. whose Heir he is, as he saith, and unless, &c.*

And so she shall have another Writ of another Form, where she recovereth her Dower against the Heir of her Husband, and after the Heir granteth the

(a) And therefore see 24 Ed. 3. 74. It is a good Plea to say that he was seised, and gave to him whom he supposes Tenant for Life, and to the Heirs of his Body, and for that he died without Heir, he entered *aliquis loc*, that he held for

Life of the Lease of the Demandant, at the Time of his Death.

(b) And not *in quas se intrusit*. 6 Ed. 2. Brief 808.

Reversion unto the said *B.* and then the Tenant in Dower dieth feised, and a Stranger abateth, the said *B.* shall have a Writ of Intrusion against the Stranger, and the Writ shall rehearse the whole special Matter, which Writ appeareth in the Register.

H And the Aunt and the Niece shall join in a Writ of Intrusion, and if the Heir doth assign Dower unto his Mother, and then commits Felony, for which the Lord claimeth the Reversion, and granteth the same to one in Fee, to whom the Tenant attorneth, and afterwards the Grantee of the Reversion hath Issue two Daughters, and dieth, and one of them hath Issue and dieth: Now the Aunt and the Niece shall join in that Writ, &c. and the Writ shall be such:

The King to the Sheriff, &c. Command A. that justly, &c. he render to B. and M. her Sister, and to P. and F. his Brother, one Messuage, &c. into which the same A. hath not Entry but after the Intrusion which H. made into it, after the Death of I. who was the Wife of W. who held it in Dower (of, &c. sometime her Husband) of N. Father of the aforesaid B. and M. and Grandfather of the aforesaid P. and F. whose Heir they are, of the Assignment of T. Chief Lord of the Fee, of whom the aforesaid I. held it in Dower, by reason of Felony committed by W. of S. Son and Heir of the aforesaid W. as it is said. And which after the Death of the aforesaid I. ought to revert to the aforesaid B. M. P. and F. by Form of the Assignment aforesaid, as they say, and whereof they complain, &c.

A And if a Man intrude after the Death of Tenant by the Curtely, the Writ. [204.] of Intrusion shall be such:

Command A. that, &c. he render to B. &c. which he claims, &c. and into which the same A. hath not Entry but by the Intrusion which he made into it, after the Death of D. who held it by the Law of England after the Death of C. sometime his Wife, the Mother or Aunt of the aforesaid B. whose Heir he is, &c. as he saith.

And in the *Per* thus:

But by C. who demised it to him, who intruded himself into it, &c.

And in the *Per* and *Cui* thus:

But by C. to whom D. demised it, who intruded himself into it.

And in the *Post* thus:

But after the Intrusion which W. made into it after the Death of C. who held it by the Law of England after the Death of D. some time his Wife, Mother of the aforesaid B. whose Heir he is, &c. and which after the Death of the aforesaid C. ought to revert to the aforesaid B. as he saith, and whereof he complains, &c. and unless, &c.

B And if a Man doth intrude after the Death of Tenant for Life; then he in the Reversion shall have such Writ of Intrusion.

The King to the Sheriff, &c. Command A. that justly, &c. (a) he render to B. &c. into which the same A. hath not Entry but by the Intrusion which he made into it after the Death of C. to whom the aforesaid B. or to whom D. the Father (or other Ancestor) of the said B. whose Heir he is, demised it for the Life of him the said C. as he saith, and unless, &c.

And in the *Per* thus:

(a) But if the Writ be founded on the Lease. *Et hereditatem suam.* 10 H. 6. 9. Yet if it be of the Ancestor, it shall be *quod clamat esse Jus* omitted, it is amendable.

Writ of Cui ante Divortium.

And into which the same A. &c. but by C. who demised it to him who intruded himself into it after the Death of W. to whom the aforesaid B. or R. Father (or other Ancestor) of the aforesaid B. whose Heir he is, demised it for the Life of him the said W. &c.

And in the *Per* and *Cui* thus:

Into which, &c. but by C. to whom D. demised it, who intruded himself into it, &c.

And in the *Post* thus:

But after the Intrusion which D. made into it after the Death of I. to whom B. the Father (or other Ancestor) of the aforesaid B. whose Heir he is, demised it for the Life of him the said I. and which, after the Death of him the said I. ought to revert to the aforesaid B. as he saith, and whereof he complains, &c.

And in the Register there are other Forms of Writs, where the Reversion **C** of the Tenant is granted by Fine or otherwise, which shall be *ex assignatione*.

And the Heir in Tail shall not have a Writ of Intrusion; if a Man do in- **D**trude after the Death of Tenant in Dower, or of Tenant by the Curtesy, or after the Death of Tenant for Life, he in the Reversion in Tail shall not have a Writ of Intrusion, but he shall be put to his Writ of *Formedon*; for that Writ lieth for him who hath the Reversion in Fee-simple, or for Term of Life, and not for him who hath the Reversion in Tail or for Term of Years; for it lieth not but for him who hath a Freehold, after the Death of Tenant for Term of Life, or of Tenant in Dower, &c.

And he in the Remainder shall have a Writ of Intrusion, if a Man do intrude after the Death of Tenant for Life; and so the Assignee of the Remainder shall have such Writ:

If Lands be given to two, and to the Heirs of one of them, and he who **E** hath the Fee dieth, and then the Tenant for Life dieth, the Heir of him in Remainder shall have such Writ.

Into which, &c. but by the Intrusion which he made into it, after the Death of C. who was the Wife of D. who held it for her Life, of the Demise which R. thereof made to her the same C. and the aforesaid D. sometime her Husband, and to the Heirs of him the said D. Father of the aforesaid B. whose Heir he is, &c. as he saith, and unless, &c. And the Process in that Writ is *Summons*, *Grand Cape* and *Petit Cape*.

Writ of Cui ante Divortium.

THE Writ of *Cui ante Divortium* lieth, where the Husband alieneth the **F** Wife's Land which she had in Fee-simple, or in Tail, or for Life, unto a Stranger in Fee-simple, in Fee-tail, or for Life; and afterwards the Husband and Wife are divorced, then the Wife shall have that Writ against the Alienee; and the Form of the Writ shall be such:

*The King to the Sheriff, &c. Command A. that justly, &c. he render to B who **G** was the Wife of D. one Messuage with the Appurtenances in N. which she claims to be her Right and Inheritance, and into which, &c. but by the aforesaid D. sometime the Husband of her the said B. who demised it to him, whom she could not oppose before the Divorce between them solemnized.*

And

H And that Writ lieth in the *Per*, *Cui* and *Post*, as doth the other Writ of *Cui in vita*.

I And if the Husband do alien unto an Abbot in Fee, and afterwards the Husband dieth, the Wife shall have a Writ of *Cui ante Divortium*, in the *Post*, against the Successor of the Abbot; and the Form of the Writ shall be thus:

K *Into which the same Abbot hath not Entry, but after the Demise which the aforesaid D. sometime the Husband of her the said B. (whom she could not oppose before the Divorce, &c.) thereof made to L. sometime Abbot of B. as she saith, and whereof she complains, &c.*

And the Heir shall have a *Sur cui ante Divortium*, where the Wife dieth before the Action brought, as well as he shall have a *Sur cui in vita*: But of an Estate-tail, the Heir shall not have a *Sur cui in vita ante Divortium*, but shall be put to his Formedon in the Descender.

L And the Aunt and the Niece shall join in that Writ, as they shall do in a *Sur cui in vita*; and the Process is Summons, *Grand Cape* and *Petit Cape*.

Writ of *Causa Matrimonii prælocuti*.

A THE Writ of *Causa Matrimonii prælocuti* lieth, where a Woman giveth Lands unto a (a) Man in Fee-simple, unto the Intent that he shall marry her, and afterwards he will not marry within convenient Time, when he is required by the Woman. Then the Woman shall have that Writ; and the Form of the Writ is such: [205.]

B *The King to the Sheriff, &c. Command A. that justly, &c. he render to B. one Messuage, which the same B. demised to him, because of a Marriage, before treated of, between them, wherefore he ought to have married her, and hath not yet married her, as she saith, &c.*

And in the *Per* and *Cui* thus:

Into which, &c. but by C. to whom the aforesaid B. demised it, because of a Marriage, &c. and hath not married her, as she saith, and whereof she complains, &c.

C And it seemeth, That that Writ lieth for the Woman, where she giveth Lands to a Man for Term of his Life, for the Intent to marry her, as well as where she giveth it in (b) Fee-simple. But if she giveth it to a Man in Tail to marry her, &c. although he will not marry her, it seemeth she shall not have that Writ against him, by that Means to avoid and defeat the Estate-tail; for that shall be contrary to the Statute of *Donis conditionalibus*. And a Man upon a Condition in Law shall not make void the Statute. For the Statute makes a Law certain by express Words of Gift in Tail. And then it is not Reason, that it should be aneanted by Intendment, or by a Thing C. 2 Part 74.

(a) But he shall never have an Averment against a Deed without Plea. 14 Ed. 3. but adjudged *contra* on a Writ of Error. 12 Ed. 1. Feoffment 114. Vide *infra* L.

(b) If it be not by Writing. *Dyer* 312. See 14 H. 8. 8. & *infra* K.

- averrable, which is not expressed, and shall be taken contrary to the Statute. And the Heir shall have that Writ as well as the Woman herself; and the Writ shall be,
- Command A. &c. that he render to B. &c. which she claims, and into which D he hath not Entry but by C. (the Mother of the aforesaid B. whose Heir she is) who demised it to him, by reason of a Marriage, &c. and he hath not married her, &c. and unless, &c.*
- And it may be in the *Per, Cui* and *Post*, as the Case is. E
- And also the Aunt and the Niece may join in the Writ.
- (a) And if a Man do give Lands unto a Woman unto the Intent to marry F him, although that the Woman will not marry him, &c. he shall not have a Writ *Causa Matrimonii prælocuti* in that Case, and also that the Woman do after marry him; yet the Woman shall hold the Land to her and her Heirs, &c. and if the Husband do afterwards alien them, she shall have a *Cui in vita* for those Lands (b).
- If a Woman do enfeoff a Stranger by Deed of Land in Fee, to the Intent G to enfeoff her, and one who will be her Husband; if the Marriage doth not take Effect, she shall have the Writ of *Causa Matrimonii prælocuti* against the Stranger, notwithstanding that the Deed of Feoffment be absolute; *quod vide* in Title *Affise*, 34 *Ed. 3. lib. Affise*.
- A Woman did enfeoff a Man upon Condition that he should take her to H Wife, and he had a Wife at the Time of the Feoffment, and afterward the Woman for not performing of the Condition, entred again into the Land, upon the second Feoffee, and her Entry was adjudged lawful, and the Condition, is good. *Anno 40 Ed. 3. lib. Aff. 40 Aff. pl. 13. 8 Ed. 2. Entry 78. 24 H. 8. Feoffments 40.*
- And the Husband and Wife may sue that Writ of *Causa Matrimonii præ-* I *locuti* against another who ought to have married her.
- And if a Woman maketh a Feoffment in Fee by Deed, reserving Rent, K then she shall not have that Writ of *Causa Matrimonii prælocuti* for the Rent reserved, because it is proved that the Reservation was the Cause of the Feoffment; but if she hath a Deed to shew and prove that the Feoffment was to the Intent that he should marry her, then she shall maintain her Action notwithstanding the Reservation made of the Rent. *Dyer 146, 312.*
- And a Woman may sue *Causa Matrimonii prælocuti* without any Writing L shewed to prove the same, where she maketh a Feoffment without Deed to a Man in Fee, to the Intent to marry her, &c. and the Process is Summons, *Grand Cape* and *Petit Cape, &c.* 14 *H. 8. 30. 12 Ed. 1. Feoffments 114. Ant. A. N. Br. 135. con.*
- (a) *Dyer 147. (b) 6 Ed. 2. Cui in vita. 24 H. 6. 1. 6 H. 4. 1. 5 Ed. 2. Cui in vita 24. N. Br. 135.*

Writ of Entry in Casu proviso.

MTHE Writ of Entry in *Casu proviso* is given by the Statute of Gloucester, cap. 7. and that Writ lieth where Tenant in Dower doth alien in Fee, for Life or in Tail, the Land which she holdeth in Dower; he who hath the Reversion in Fee, or in Tail, or for Life, shall maintain that Writ against the Alienee; and against him who is the Tenant of the Freehold, of the Land during the Life of the Tenant in Dower, &c. And the Writ may be made in the *Per, Cui* and *Post*; and the Writ shall be such:

The King to the Sheriff, &c. Command A. that, &c. he render to B. &c. which he claims, &c. and into which the said A. &c. but by C. who was the Wife of D. who demised it to him, who held it in Dower of the Gift of the aforesaid D. some time her Husband, the Father (or other Ancestor) of the aforesaid B. whose Heir he is, and which after the Demise made by her the said C. to the aforesaid A. against the Form of the Statute thereof provided at Gloucester by the Common Council of our Realm, ought to revert in Fee to the aforesaid B. by the Form of the same Statute, as he saith, and unless, &c.

And in the *Per*, thus:

Into which the same A. hath not Entry but by C. to whom D. who was the Wife of E. demised it, who held it in Dower, &c. and which after the Demise, &c.

And in the *Post*, thus:

Command A. that, &c. he render to B. &c. which he claims, &c. and into which, &c. but after the Demise which C. (who was the Wife of D. who held it in Dower of the Gift of the aforesaid D. some time her Husband, Father of the aforesaid B. whose Heir he is) thereof made to F. and which after the Demise made by her the said C. &c. (as above, till) ought to revert to the said B. by the Form of the same Statute, as he saith, and whereof he complains, &c. and unless, &c.

[206.]

A And if a Woman do recover her Dower against the Heir, and afterwards doth alien in Fee, the Heir shall have the Writ of *Casu proviso*; and in the Writ he shall mention the Recovery, as he shall do in a Writ of Entry *ad communem Legem*, upon an Alienation made by Tenant in Dower, &c. And although a Woman alien in Tail, or for Life, yet the Writ is always of one Form.

B If a Man grant the Reversion of Lands which are holden of his Inheritance in Dower to another, and the Tenant attorneth, and afterwards the Tenant in Dower doth alien in Fee, the Grantee of the Reversion shall have such Writ *de Assignatione*.

Command A. that, &c. he render to B. &c. and into which, &c. but by C. who was the Wife of D. who held it of the aforesaid D. in Dower, of the Gift of the aforesaid D. some time her Husband, of the Assignment which W. Son and Heir of the aforesaid D. thereof made to the aforesaid B. and which after the Demise, &c.

And if the Heir grant the Reversion in Fee, and the Tenant attorneth, and afterwards the Grantee granteth the same over, and the Tenant doth attorn; and afterwards the Tenant in Dower doth alien the Fee, the third Grantee of the Reversion shall have such Writ *de Casu proviso*.

Writ of Entry in consimili Casu.

The King to the Sheriff, &c. Command A. that, &c. he render to B. &c. which he claims, &c. and into which, &c. but by, or, after the Demise, &c. (as the Case is) which C. who was the Wife of D. who held it in Dower (of the Gift of the aforesaid D. some time her Husband) of the aforesaid B. of the Assignment which E. of whom the aforesaid C. held it in Dower of the Assignment of F. of whom the same C. held it in Dower of the Assignment which G. Son and Heir of the aforesaid D. thereof made to the aforesaid F. thereof made to the aforesaid W. and which after the Demise made by her the said C. &c. ought to revert, &c.

If the Writ be in the *Per*, and if the Writ be in the *Post*, then the Writ C shall be,

And which after the Demise by her the said C. ought to revert by Form of the Statute, &c.

And the Aunt and the Niece may join in that Writ where the Tenant in D Dower doth alien in Fee, and they have the Reversion by Descent from their Ancestor, and the Process is Summons, Grand Cape and Petit Cape, &c. E

Writ of Entry in consimili Casu.

The Writ is not maintainable against Tenants in Tail, after Possibility of Issue extinct. Old Tenure. 13 Ed. 2. Entre congeable 56. 14 Ed. 3. Brief 283. N. Br. 137. Ant. 198. 3 Ed. 2. Entr. &c. 8 N. 11 Ed. 2. Entry 68.

THERE is another Writ of the like Nature, which is called a Writ of F Entry *in consimili Casu*; and that Writ lieth where Tenant by the Curtesy, or for Life, or for another's Life, doth alien in Fee, (a) or in Tail, or for Life; now he in the Reversion, who hath an Estate therein for Life, or in Fee-simple, or (b) in Tail, shall have that Writ during the Life of the Tenant for Life who aliened, and that Writ is not given by the Statute of *Gloucester*, which gave the Writ of *in Casu proviso*; but it is formed and granted upon the Statute of *Westminster 2. cap. 14.* which wills, *That as often as it shall happen in the Chancery, that in one Case a Writ is found, and in the like Case falling, wanting the same Remedy; now the Clerks of the Chancery shall agree in the making the Writ, and that appeareth H. 3 Ed. 2.*

And if the Tenant by the Curtesy doth alien, he in the Reversion shall have G such Writ:

Command A. that, &c. he render to B. one Messuage, &c. which he claims, &c. and into which, &c. but by C. (who demised it to him) who held it by the Law of England after the Death of E. some time his Wife, the Mother, Great Grandmother or Grandmother of the aforesaid B. whose Heir he is, and which after the Demise thereof made by him the said C. to the aforesaid A. in Fee, ought to revert to the aforesaid B. by Form of the Statute provided in such like Case, as he saith, and unless, &c. And in the Per and Cui, thus: And into which, &c. but by C. to whom D. demised it, who held it by the Law of England, &c. And in the Post, thus: And into which, &c. but after the Demise which C. who held it by the Law of England, &c. (as above) whose Heir he is, thereof made to F. and which after the Demise, &c.

(a) But not if he be Tenant after Possibility, 13 Ed. 3. *Entre cong.* 56.

(b) So for him who has a Fee-tail in Reversion, 21 Ed. 3. 11.

See a Writ against J. S. *In quo non habet ingressum nisi post* a Lease to him made, &c. 8 Ed. 2. Brief 810.

And

And if the Tenant for Life alien, then he in the Reversion shall have a Writ in this Form :

The King to the Sberiff, &c. Command A. that justly, &c. he render to B. one Messuage, &c. into which the same A. hath not Entry, but by C. to whom the aforesaid B. demised it, for the Life of him the said C. and which after the Demise by him the said C. to the aforesaid A. thereof made in Fee, ought to revert to the aforesaid B. by Form of the Statute, &c. ut supra.

And Note, That by that Writ it appeareth, that the Writ doth suppose, ^{38 H. 6. 3:} that the Tenant for Life doth alien in Fee; and although he grant but for Life, or in Tail, yet the Writ doth suppose that he alieneth in Fee, &c. but that is not material: For if it be in Fee, or in Tail, or for Life, it is a Forfeiture of his Estate.

And so in the Case, in the Writ *in Casu proviso*, and in the Writ of *Entre ad communem Legem*, it supposeth the Alienation to be made in Fee, although it be but for Life, or in Tail, for that there is no other Form: And it may be made in the *Per, Cui* and *Post*, and that without Title made in the Writ, because it is of a Lease made by the Defendant himself to the Tenant that alieneth: But if the Father or other Ancestor lease for Life, and dieth, and afterwards the Tenant for Life alieneth in Fee, &c. now the Heir who is in the Reversion, shall have a Writ, which shall comprehend a Title in it; and shall be such:

The King to the Sberiff, &c. Command A. that, &c. he render to B. one Messuage, &c. which he claims, &c. and into which, &c. but by C. and D. his Wife, to whom I. the Father or Mother, (or other Ancestor) of the aforesaid B. whose Heir he is, demised it for the Lives of them the said C. and D. and which after the Demise, &c. [207.]

And there the Writ doth suppose, that the Wife did demise it, &c. and yet she shall have a *Cui in vita* after the Death of her Husband, to recover the Freehold, notwithstanding the Alienation made by her Husband. And if Tenant for Life grant his Estate unto another, and the Grantee alieneth in Fee, &c. then the Writ shall be,

Into which the same A. &c. but by C. to whom D. who held it for his Life of the Demise of the aforesaid B. demised it for the same Term, and which after the Demise, &c.

A And if a Man lease Lands for Term of Life, and afterwards dieth, and his Heir grants the Reversion to B. and the Tenant attorn, and afterwards the Lessee for Life granteth his Estate over to one who alieneth to A. in Fee; now B. shall have such Writ:

Command A. that, &c. he render to B. &c. into which, &c. but by C. (who demised it to him) who held it for the Life of D. of the aforesaid B. of the Assignment which I. Son and Heir of R. made thereof to the said B. which said R. demised it to the aforesaid D. for the same Term, and which after the Demise, &c.

If H. lease Lands unto R. for Life, and afterwards granteth the Reversion ^{12 Ed. 2. Entry 69.} to B. in Fee, and R. attorn, and afterwards R. alieneth in Fee, B. shall have this Writ:

The King to the Sberiff, &c. Command A. that, &c. he render to B. &c. into which, &c. but by R. (who demised it to him) who held it for his Life of the aforesaid B. of the Assignment which I. (who demised it to R. for the same Term), thereof made to the aforesaid A. and which after the Demise, &c.

20 Ed. 2.
Brief 849.

And if Lands be given unto two, and the Heirs of one of them, and he **B** who hath the Fee dieth, and afterwards the Tenant for Life alieneth in Fee, the Heir of him in the Remainder shall have this Writ :

Into which, &c. but by C (who demised it to him) who held it for his Life of the Demise which H. thereof made to the said C. and D. and the Heirs of him the said D. Father of the said B. whose Heir he is, and which after the Demise, &c. (a).

And by that appeareth, that he in the Remainder shall have a Writ of *in C consimili Casu*, if Tenant for Life alien in Fee.

Wid 3 Ed. 2.
Entre 6. con.
For it is not
given by the
Statute of
Gloucester.
But West. 2.
cap. 24. see
206. fol.

And if an Abbot or Prior lease Lands for Life, and alieneth, and the Prior dieth, the Successor shall have this Writ :

Command A. that, &c. he render to B. one Messuage, &c. which he claims to be the Right of his Church of Saint Thomas the Martyr of K. and into which, &c. but by C. to whom D. demised it, who held it for his Life of the Demise which S. some time Prior of K. Predecessor of the aforesaid Prior, thereof made to the aforesaid D. and which after the Demise, &c.

29 Aff. 62.
21 Ed. 3. 11.
Entry 10.
7 Ed. 3. 45.
31 Ed. 1.
Entry 64.
21 Ed. 3.
Entry 10.

And if Tenant in Tail maketh a Lease for Life, and the Tenant for Life **D** alieneth in Fee, the Tenant shall have a Writ *in consimili Casu*. And so it seemeth, if Tenant in Tail do lease the Land unto another for the Life of the Lessee, and dieth, and the Tenant for Life alieneth in Fee; the Heir in Tail may chuse to have a Formedon, or to sue the Writ of *consimili Casu*, living the Tenant for Life. For the Tenant in the Action shall not have the Plea to abate the Writ, to say, that he hath Title to have a Formedon of the Land, &c. But if Tenant in Tail lease Lands for the Term of his own Life, which is not any Descent, and afterwards the Tenant for Life doth alien in Fee, and the Tenant in Tail dieth, his Heir shall not have a Writ of *consimili Casu*, but shall be put to his Formedon in that Case. For there he hath not Title to have any other Action by Colour of any Demise; but in the Case before he had Title by reason of the Discontinuance made for Life, to claim by reason of the Right in Reversion descended to him, so that he had Right by reason of the Reversion in his Father reserved upon the Lease, and also by reason of the Title of the Intail to chuse what Action he would have; *tamen quere*.

7 Ed. 2.
Entry 7.
7 Ed. 3. 17.
Entry 61.

A Lease was made to one for Term of Life, the Remainder to another in **E** Fee, and afterwards the Tenant for Life did alien in Fee, for which he in Remainder brought a Writ *de consimili Casu*, and the Writ was abated. *Pasch. 7 Ed. 3.* But the Court there said, That the Cause was, because he in the Remainder was not to have the Remainder *in facto*, until it fell, and that after the Death of Tenant for Life; and it is not like unto a Reversion: But the Law is not taken so at this Day, but that he in the Remainder hath the Remainder vested in him, as he in the Reversion hath the Reversion: For he shall have an Action of Waste, and shall enter for the Alienation of his Tenant, as well as he in the Reversion, and therefore it followeth, that the Remainder is in him *in facto*; for which Cause I conceive, that Judgment was not rightly given. And *Hill. 18 Ed. 2.* it was holden by Justice *Herle*, that **F** the Writ did lie for him in the Remainder, &c. And the Heir in Tail brought a Writ of *consimili Casu* upon an Alienation made by Tenant by the Curtesy, and the Writ was maintainable. *T. 31 Ed. 1.*

18 Ed. 2.
Im y 74.
Nat. u. 138
con.

(a) See *ibid. Aff. 11. 91.* That the Father may enter for the Forfeiture.

Writ of Entry ad communem Legem.

- G** **T**HE Writ of Entry *ad communem Legem* lieth, where Tenant in Dower, or Tenant by the Curtesy, or for Life, do alien in Fee, or for Life of another, or in Tail, the Lands which they hold, &c. (a) after their Death, he in the Reversion, who hath it in Fee, or for Life, shall have that Writ of Entry *ad communem Legem*; and the Writ shall be such, &c.
- H** *The King to the Sheriff, &c. Command A. that justly, &c. he render to B. &c. which he claims to be his Right and Inheritance, and into which the same A. hath not Entry but by C. who was the Wife of D. (who demised it to him) who held it in Dower of the Gift of the aforesaid D. some time her Husband, the Father (or other Ancestor) of the aforesaid B. whose Heir, &c. as he saith, &c. and unless, &c.* [208.]
- A** And that is a Writ for the Heir in the Reversion, who hath the same by Descent, and may be in the *Per, Cui* and *Post*.
- B** And if a Woman recover Dower, and afterwards alieneth in Fee, and dieth; then the Writ of Entry *ad communem Legem* shall mention the Recovery, &c. And if the Tenant by the Curtesy alieneth in Fee, and dieth, the Heir shall have such Writ:
Command, &c. that, &c. he render to B. &c. which he claims, &c. into which the same A. hath not Entry but by C. who held it by the Law of England after the Death of D. some time his Wife, the Mother of the aforesaid B. whose Heir he is, as he saith, &c.
- And may be brought in the *Per, Cui* and *Post*, as the Case is.
- And if Tenant by the Curtesy alien the Fee, and dieth, he in the Reversion who is Heir in Fee-simple, may sue that Writ, or an Assise of Mortdauncestor given by the Statute of Gloucester, cap. 3.
- C** And if Tenant for Life alieneth in Fee, and dieth, he in the Reversion may have that Writ in divers Forms: One, if he have the Reversion by Descent, the Writ shall be,
Command A. that, &c. he render, &c. which he claims, &c. and into which the same A. hath not Entry but by C. to whom the aforesaid B. or C. Father (or other Ancestor) of the aforesaid B. whose Heir he is, demised it for the Life of him, the said C. as he saith, &c.
- And he may leave out these Words in the Writ, *Which he claims to be his Right and Inheritance, &c.* when the Demandant made the Grant to the Tenant for Term of Life who aliened, &c.
- D** And that Writ may be in the *Per, Cui* and *Post*, as the Case is. And he
- E** may bring a Writ of *ad Terminum qui præterit*, if he will, if the Tenant for Term of Life doth alien, and dieth, as it shall please him.

(a) And yet the Death shall not be shewn by the Writ. 16 Ed. 3. Brief 667.

Writ of Cessavit.

And if Tenant for Term of Life do grant over his Estate unto another, and the Reversioner in the Reversion granteth the Reversion in Fee, and the Tenant doth at-torn; and afterwards the second Grantee doth alien in Fee, the Grantee in the Reversion shall have such Writ:

Into which the same A. hath not Entry but by C. (who demised it to him) who held it for his Life of the aforesaid B. of the Assignment which I. who demised it to the aforesaid C. for the same Term, made thereof to the aforesaid B. as he saith, &c.

And it may be in the *Per, Cui* or *Post*, as the Case is; and in the Writ *G* which is in the *Post* shall be this Clause:

And which after (a) the Death of the aforesaid C. ought to revert to the aforesaid B. by the Form of the Assignment aforesaid, as he saith, and whereof he complains, &c.

Writ of Cessavit.

THE Writ of *Cessavit* lieth in divers Ways: For one Writ is where there **H** is Lord and Tenant, and the Tenant will not pay (*b*) his Rent, nor do his Services, as Suit, &c. to his Lord as he ought to do, nor hath sufficient Goods or Chattels upon the Land to be distrained for the Rent or Services behind; but suffereth the Lands to lie fresh, not occupied for two Years following together; then the Lord of whom the Lands are holden may have the Writ against the Tenant, and if it be found for him, he shall recover the Land, if the Tenant will not find Sureties to pay the Rent then after; and that Writ is of such Form:

Tenant in Dower shall have a Cessavit, and lay the Seisin in her Husband: 1 Ed. 1. Cessavit 54.

43 Ed. 3. 15. 9 H. 7. 16. He for Life shall have Cessavit, but not Lessee for Years, for that is a Præcipe. 12 R. 2. Cess. 45. Cessavit of a Rent, 5 H. Cessavit of Advowson, 23 Ed. 3. Cess. 46. 43 Ed. 3. 15. acc.

The King to the Sheriff, &c. Command A. that, &c. he render to B. one Mesuage, &c. which he the same A. holds of him by certain Services, and which ought to revert to him the said B. by Form of the Statute provided by the Common Council of our Realm, because the aforesaid A. hath now ceased in doing the aforesaid (c) Services for two Years, as he saith, &c.

(a) But *Note*; The Writ in the Degrees does not make Mention of the Death of the Tenant for Life. See 16 Ed. 3. Brief 661.

(b) *Note*; If the Lord brings a *Cessavit*, and supposes the Tenure to be by two Shillings Rent, where he holds only by Fealty, and the Tenant traverses the Tenure, and it is found against him, he shall be charged with the Rent. 24 Ed. 3. 72.

He may tender the Arrears without saving of his Default. 27 Ed. 3. 89. The Tenant took the Quantity of the Services by Protestation, and pleads over, &c. and after made Default, and at the *Petit Cape* tenders the Arrears according to

his Protestation, and there they were at Issue on the Quantity, &c. *Note*; If the Tenant will save his Tenancy, and tender all the Arrears, he ought also to tender Damages, 21 Ed. 3. 23. taxed by the Court.

In a *Cessavit* for Suit of Court he tenders Damages for not coming, by Tax of the Court, 17 Ed. 3. 17. and it is no Plea, that Part of the Services are not in Arrear. 30 Ed. 3. 22.

(c) See a *Cessavit* by several *Præcipes* against A. and B. that A. and B. *de eo tenent & reverti debent eo quod A. and B. cessaverunt.* 20 Ed. 2. Brief 826.

And that Writ is given by the Statute of *West. 2. cap. 21.* and may be brought in the *Per, Cui* and *Post*.

The *Per* thus: *Into which the same A. &c. but by C. who demised it to him, who held it of the aforesaid B. by certain Services, and which ought to revert to him the said B. &c. (until) because the aforesaid A. or, because the aforesaid C. hath now ceased in doing the aforesaid Services for two Years.* 48 Ed. 3. 4. The Seisin was alledged in the Feoffor and the Cesser in the Feoffee, 39 Ed. 3. Br. Cess. 19. acc.

And it ought to be alledged in the Writ by whom the Ceaser was.

And in the *Per* and *Cui* thus: *Into which, &c. but by C. to whom D. demised it, who held it of the aforesaid B. &c.*

(a) And in the *Post* thus: *Into which, &c. but after the Demise which A. who held it of the aforesaid B. by certain Services, made thereof to A. of E. and which ought to revert to him the said B. because the aforesaid, &c. as he saith, &c. and whereof he complains, &c. and unless, &c.* Note, That if the Feoffee himself cease, the Writ shall not be in the *Per*, but ge- the Writ shall

neral: Cont. If the Feoffor cease before the Feoffment; so if the Disseisee cease before the Disseisin, be in the *Post*. 21 Ed. 3. 44. Br. Cess. 17.

And there is another Form of *Cessavit*, without making Mention of any Entry, thus: 29 Ed. 3. Cessavit 43.

Command W. of F. and A. his Wife, that, &c. they render to the Abbot of S. two Messuages which I. of B. held of him by certain Services, and which ought to revert to him the said Abbot, &c. (b) because the said W. and A. have now ceased in doing, &c. 19 Ed. 3. Brief 149. 17 Ed. 3. 57. 33 H. 6. 45. 13 Ed. 3. Cess. 29.

I And the *Cessavit* lieth for a Suit of Court; (c) but the Donor in Tail shall not have a *Cessavit* against the Tenant in Tail: But if a Man maketh a Gift in Tail, the Remainder over in Fee unto another, or unto the right Heirs of the Tenant in Tail, there, in that Case the Lord of whom the Lands are holden immediate shall have a *Cessavit* against the Tenant in Tail, because that he is Tenant to him, &c. 33 H. 6. 53. 28 Ed. 3. 9. 19 Ed. 3. Cess. 30. 44 Ed. 3. 27. 14 H. 6. 15. 19 Ed. 2. Cess. 30. 28 Ed. 3. 95. ibid. 34 & 35. acc. But there

it is said, That if the Tenant cease, and makes a Gift in Tail, that the Lord may have *Cessavit* in the *Per*.

And.

(a) 20 H. 6. 28. A Recovery in the *Post* against a Feme Covert.

(b) *Et quod prædicti W. and A. &c.* See such a Writ awarded good; for by *Parring*, he cannot suppose none to be his Tenant, but him by whose Hands he was seised, 11 Ed. 3. Brief 477. 14 Ed. 3. Brief 269. and see accordant; for it may be *A.* is in by Disseisin, and yet *B.* shall be said Tenant to the Lord; so if the same Tenant leases for Life, or in Tail to *A.* who cesses, no other Writ lies; wherefore the Writ was awarded good, 21 Ed. 3. 44. See 39 Ed. 3. 13. And see what Writ does not lie in this Case. *Kelw.* 205, 131. 14 Ed. 2. Brief 815.

(c) So it is adjudged; yet if the Lord recovers, the Issue shall have a Formedon, 28 Ed. 3. 45. and it seems on the same Reason, if the Tenant makes a Lease for Life, the Remainder in

Fee, a *Cessavit* lies against the Lessee for Life, supposing him to be his Tenant. But it seems, though he does recover, yet after the Death of Tenant for Life, he in Reversion shall have (avoid) his Recovery against the Lord; but if the Tenant makes a Lease for Life, or a Gift in Tail, saving the Reversion to himself, if afterwards a Cesser be, the Lord shall have a *Cessavit*; but he ought not to suppose, that the Tenant in Tail is his Tenant; for then this Writ shall abate; but he shall have the Writ here next adjacent. And it seems in such Case, that he in Reversion is Tenant to the Lord, and a Default in him of Non-payment, as well as in the other, shall bind him, and so the Books seem to intend. 28 Ed. 3. 95, 96. 45 Ed. 3. 27. So a Recovery in a *Cessavit* against a Disseisor, shall bind the Disseisee, 20 H. 6. 28. a Recovery

10 Ed. 4. 1 & 2. And if a Man cease to pay his Rent and Services for two Years, and inclose K
 37 H. 6. 45. the Land, so as the Lord cannot distrain, if he break not the Gates or the
 [209.] Hedges of the Land which make the Inclosure, the Lord shall have a *Cessavit*,
 He pleads that although the Tenant hath sufficient Cattle upon the Land to be distrained
 the Land was sufficient to his Rent. For the Land ought to be open, and also there ought to be
 Distress with- sufficient to distrain for the Rent, &c. But the Land is not open to his Dis-
 out saying tress, &c. and so open to his Distress is a good Plea, without saying more in
 overt, and such Case. *M. 2 H. 4, 5. 2. 30 H. 6. Cess. 7.*
 good: And if the Cattle of a Stranger do escape into the Lands, those Cattle are A
 2 H. 4. 5. not sufficient or overt to his Distress: But if they be the Tenant's Cattle, it is
 35 H. 6. otherwise. *40 Ed. 3. 11. 50 Ed. 3. Cess. 10.*
 Cess. 7. acc. If three Men hold by one intire Rent, as by a Horse, and the Lord doth B
 35 H. 6. recover two Parts of the Land against two of them, and the third findeth
 Cess. 7. acc. Sureties, &c. the whole Rent is extinct by that Recovery. *14 Ed. 3. Cess. 28.*
 But if a Man occupy at Will his Goods are 13 *Ed. 3. 47. 10 H. 4. 1.*
 sufficient. And a Man shall not have one *Cessavit* for Lands which are holden by fe- C
 3 Ed. 2. veral Services; but he ought to sue several Writs (a). *20 Ed. 3. Cess. 23.*
 Avow. 206. *11 Ed. 2. Cess. 50. 14 H. 6. 25. 28 Ed. 3. 9. 45 Ed. 3. 27. 20 H. 6. 46.*
 Br. App. 20. *Ant. 179.*
 3 Ed. 3. 47. (b) If the Lord do distrain pendent his Writ of *Cessavit* against his Tenant, D
 Cess. 40. the Writ shall abate.
 4 H. 6. 29. And the Lord shall have a Writ of *Cessavit* against Tenant for Life, where E
 10 H. 7. 24. the Remainder is over in Fee to another (c). *20 Ed. 3. Cess. 32, 33, 38.*
 45 Ed. 3. 27. *48 Ed. 3. 4. 12 Ed. 4. 7. 5 Ed. 3. 70. 6 Ed. 3. 45. 4 Co. 11. b. 23 Ed. 3. 21.*
 14 H. 6. 25. *Cess. 21.*
 48 Ed. 3. 4.

Recovery against a Feme Covert binds the Husband. *12 Ed. 4.*—A Recovery against the Husband and Wife binds the Wife. See *3 Ed. 3. 26. contr. in a Cessavit, 7 H. 4. 20. 10 H. 6. 5.* Tenant for Life cesses, if the Lord recovers against him, it shall not bind him in Reversion or Remainder, *28 Ed. 3. 95. 45 Ed. 3. 23.* but during the Life of the Lessee he shall be ousted of Waste, or Entry *in consimili Casu.* Note; Feoffee or Tenant for Life shall not have Aid of his own Cesser, *28 Ed. 3. 96. contr. Ranton. 3 Ed. 3. 26.* If A. Tenant of three Acres cesses, and aliens to three several Men an Acre to each, three several *Cessavits* lie, and there shall be special Counts; but if he leases one Acre to B. for Life, and another to C. in Tail, and afterwards cesses, a *Cessavit* does not lie against B. or C. as to those two Acres, but he shall have a *Cessavit* for the third Acre, and count specially. Note; By the Cesser of the Meine a *Cessavit* does not lie for the Lord, al-

though the Meine after the Cesser do purchase the Tenancy. *Kelw. 105.*

(a) See *20 Ed. 3. Cessavit 33.* accordant 21. The Tenant says, That the Demandant then, or before the Writ purchased, took a Distress for the Services in the mean time arrear, and shewed what Distress. *Parning:* Will you say, That the Distress was sufficient for the Rent arrear? *Relf* agreed to say it was sufficient. *Gra.* had you no Distress? See *11 Ed. 3. Cess. 2.*

(b) See *21 Ed. 3. 18.* where Acceptance of Services pending the Writ shall abate it, and falsify the Judgment had against the Feoffor.

(c) He shall have a Writ, supposing that he held of him and cesses, *45 Ed. 3. 27.* and so held on the same Reason, *28 Ed. 3. 95.* But if the Tenant leases for Life generally, saving the Reversion to him, a *Cessavit* lies, but he ought not to suppose, that the Lessee for Life is his Tenant.

- (a) The Quantity of the Service is not traverfable in a *Cessavit*, but the fame fhall be taken by Proteftation.
- The Seifin of the Service is not traverfable in a *Cessavit*, but in *Cessavit* generally the Tenure is traverfable.
- F** The Aunt and Niece fhall not join in a *Cessavit* for a Ceffer made before the Title accrued to the Niece: But for a Ceffer in both their Lives they fhall join in a *Cessavit*; *aliter* of Jointenants. *N. Br.* 139.
- And a Man may have a *Cessavit* againft feveral Perfons, and feveral Tenants by feveral *Præcipes*, &c. but not by one *Præcipe*.
- G** A *Cessavit* doth not lie for him in the Reverfion againft Tenant for Life, nor againft Tenant in Dower, but againft Tenant by the Curtefy by the Lord Paramount, becaufe he is Tenant to the Lord Paramount: *Tamen quære* of that Cafe. But Tenant by the Curtefy, Tenant in Dower, or Tenant for Life, fhall have a *Cessavit* againft the Tenant who ceafeth,
- H** It is a good Plea in a *Cessavit* to fay, that he did not ceafe for two Years before the Writ brought.
- I** And by the Opinion of *Thorpe* and *Hankford*, a Man fhall have a *Cessavit* againft an Abbot or a Prior of the Lands of their Foundation; but I know no Difference but that the Lord fhall have a *Cessavit* againft an Abbot or a Prior as well as againft others, of the Lands which he holdeth of them by Rents or other Services; but for the Lands which they hold in *Frankalmoigne* a *Ceff.* doth not lie for not doing the Service, neither doth a *Cessavit* lie for not doing Homage or Fealty.
- K** And if a Man holdeth Lands in feveral Counties by one Tenure and one Service, if he ceafe, &c. a *Cessavit* doth not lie. *Quod vide M.* 18 *Ed.* 3. *t. Affife* (b).
- L** And there is another Writ of *Cessavit* grounded upon the Statute of *West.* 2. *cap.* 41. That if a Man give Land unto a religious Houfe, or unto another, to find a Chaplain to fing Divine Service, or to find certain Tapers to burn before fuch an Image, or to diftribute certain Bread and Beer every Week unto poor Men. Now if thefe Services be not done for two Years, nor fufficient Diftrefs upon the Lands for the Time to diftrain for thofe Services, then he or his Heir who gave the Lands, fhall have a Writ of *Cessavit*, thus:
- The King to the Sheriff, &c. Command S. Bifhop of Worcester, that, &c. he render to H. Earl of D. one Mefluage, &c. in the Town of W. which M. lately Earl of D. Brother of the aforefaid H. whofe Heir he is, gave to W. fome time Bifhop of W. and his Succelfors, Bifhops of the Place aforefaid, to celebrate yearly the Obits of I. the Brother, and B. the Mother of the aforefaid T. and alfo the Obits of the fame T. and R. of H. after their Deceafe, and which ought to revert to the aforefaid Earl by Form of, &c. becaufe the aforefaid Bifhop hath now ceafed for two Years in celebrating the Obits aforefaid, as he faith, &c. Writnefs, &c.*

1 Ed. 3. 23.
8 Ed. 3. 47.
Nat. Br. 139.
20 Id. 3.
Ceff. 47.
fupra B.
48 Ed. 3. 4.
Ceff. before
Seifin: 33 Ed.
3. Wilby
Ceff. 42.
20 Ed. 3.
Ceff. 47.
11 Ed. 3.
Ceff. 50.
13 Ed. 2. ib. 51.
26 Ed. 3.
Ceff. 61.
7 H. 4. 20.

18 Aff. 1.
Br. Ceff. 2c.
Post 211. E.
6 H. 7. 2, 7.
3 H. 6. 45.
18 Aff. pl. 1.
18 Ed. 3.

(a) But it feems he may plead, that he held this Land and others by the fame Services, as well as in an Avowry. 2 *Ed.* 4. 27. 18 *Ed.* 4. 17. 23 *Ed.* 3. 21.

(b) In *Cessavit* the Defendant pleads, that the Plaintiff had diftrained for Fealty pending the Writ, and thereupon iffue joined. 20 *Ed.* 3. *Ceff.* 33. *Vide ant.*

Writ of Cessavit.

And in another Form for a Chantry: *Command the Abbot of N. that, &c. he render to B. and C. his Wife, one Messuage, &c. which R. the Great Grandfather of the aforesaid C. whose Heir (a) she is, demised to E. some time Abbot of N. or to the same Abbot and his Successors, Abbots of N. to find a certain Canon for celebrating Divine Services for the Souls of the Ancestors and Successors of the same R. in the Abby of N. and which ought to return to the aforesaid B. and C. by the Form of the Statute provided by the Common Council of our Realm in case of such Demise, because the said Abbot hath now ceased in finding the aforesaid Canon for two Years, as they say, and unless, &c.*

(b) And the like Writ may be sued against a Parson for Lands given to his M Predecessor in Fee to say Divine Service in such a Chapel from three Weeks unto three Weeks.

(c) And so a Man shall have such Writ for Lights, or for drinking for the N Poor, or other Alms-deeds, if the said Alms-deeds be withdrawn for two Years together.

And where a religious Man or other spiritual Person bringeth that Writ of *Cessavit*, it shall not be said in the Writ, *Quod clamat esse jus & hæreditatem suam, &c.*

And a Man shall have a *Cessavit* for not doing of several Things which he ought to do, thus:

Command A. &c. that, &c. he render to B. &c. which T. the Great Grandfather of the aforesaid B. gave to W. some time Rector of, &c. and his Successors, Rectors of, &c. to find a certain Chaplain to celebrate Divine Service for the Souls of the Ancestors of the same T. in the Church of, &c. and two Wax Lights to burn the whole Time wherein that Mass is said, and which ought to revert to him the said B. because the aforesaid, &c. hath now ceased for two Years in finding the aforesaid Chaplain and Wax Lights, &c.

And the like Writs may be made in the *Per, Cui* and *Post*.

There is another Writ of *Cessavit* founded upon the Statute of *Gloucester*, A. c. 4. where a Man giveth certain Lands in Fee-farm to find him certain Estovers to burn in the Winter, &c. or clothing, or to pay the fourth Part of the Value of the Land yearly, and afterwards he ceaseth, and lets the Land lie fresh, not manured for two Years together; then he or his Heir who gave the Land shall have the Writ of *Cessavit* which followeth, *viz.*

The King to the Sheriff, &c. Command A. that, &c. he render to B. one Messuage, &c. which the same B. demised to him in Fee-farm, rendring therefore by the Year to him the said B. the third Part or fourth Part of the true Value of the Messuage aforesaid, and which ought to revert to him by the Form of the Statute thereupon provided by the Common Council of our Realm, because the aforesaid A. hath now ceased in the Payment of the aforesaid Farm for two Years, as he saith, and unless, &c.

(a) See this Writ affirmed good in all Points, 30 Ed. 3. Brief 29.

(b) Note 28 Ed. 3. 96. and 3 Ed. 3. 26. A Recovery was against a Parson on such a *Cessavit de Cantuario*, and held it should bind his Successors, 7 H. 4. 20. 10 H. 6. 5. but *contr* of a *Cessavit per biennium*, 3 Ed. 3. 26. but by the Judges, a *Cessavit de Cantuario* does not lie for

Lands that are Parcel of the Foundation of the Priory or Chantry. 7 H. 4. 20.

(c) *Quere*, if the Tenant may tender the Arrears, and to whom; and by *Hank.* it shall be to the Demandant, but *per Thirn.* not so in a *Cessavit* of a Chantry. 12 H. 4. 24. See Tender of Arrears of Houses and Chantry Lands according to the Discretion of the Justices. 14 H. 4. 4.

And in the *Per*, thus: *And into which the same A. hath not Entry, but by E. the Father of the aforesaid B. whose Heir he is, who demised it to him in Fee-farm. Or thus in the Per and Cui: But by D. to whom the aforesaid B. or C. the Father of the aforesaid B. whose Heir he is, demised it in Fee-farm, &c.*

And in the *Post*, thus: *But after the Demise which the aforesaid B. or C. Father of the aforesaid B. whose Heir he is, thereof made to D. in Fee-farm, &c. hath ceased, &c. as he saith, and whereof he complains, &c. and unless, &c.*

B And if a Woman give Lands in Fee-farm, rendring to her the Moiety, or the third Part of the Value, and afterwards taketh Husband, and the Tenant ceaseth for two Years, and suffereth the Land to lie fresh, and doth not pay the Rent, the Husband or Wife shall have a Writ of *Cessavit*, and the Writ shall suppose *which to the aforesaid A. and B. his Wife ought to revert, and not the Wife only.*

C And *Note*, That these Gifts in Fee-farm, to render the third Part, or the fourth Part, or to find a Chaplain to say Divine Service, or to find him Clothing or Estovers, or to distribute, &c. upon which a Writ of *Cessavit* lieth, it behoveth that this were made before the Statute of *Quia emptores terrarum*, &c. upon which Feoffments a Tenure is reserved and implied in the Gift. But if a Man at this Day, after the Statute of *Quia emptores*, will give Lands in Fee-farm to render the third or the fourth Part of the Value of the Land, or to find a Chaplain, &c. if the Tenant ceaseth, &c. the Donor nor his Heir shall not have a Writ of *Cessavit*, because there is not any Tenure betwixt them. *Quod vide M. 45 Ed. 3. 1. Cess.*

D But if a Man giveth Lands in Tail at this Day to find a Chaplain, or to render a third Part of the yearly Value, or to find Estovers yearly, if the Tenant ceaseth of these Services, it is a Doubt whether the Donor shall have a *Cessavit* to recover the Lands. Ant. 208, 209. N. B. 149.

And it seemeth that the Donor shall have a *Cessavit*; for a Writ of *Cessavit* is given by the Statute of *Westm. 2. cap. 41.* for Lands given to find a Chaplain, or to find Tapers, or to distribute Alms to poor Men. But then it seemeth that the same is intended of Gifts in Fee-simple, because that the Statute of *Westm. 2. c. 41.* saith, N. B. 141. D. 209.

That an Action shall lie for the Donor or his Heir to demand the Lands so given in Demesne, as it is appointed in the Statute of Gloucester of Tenements demised to do, or render the fourth Part of the Value, or more, and upon which Feoffments a Tenure was reserved and implied, because the Statute of Quia emptores, &c. was made after the Statute of Westm. 2.

And also before the Statute of *Quia emptores terrarum*; if a Man make a Feoffment in Fee, and doth not say of whom the Feoffee shall hold, &c. then the Feoffee ought to hold of the Feoffor and his Heirs. By which it appeareth, that if a Man at the Time of the making of the Statute of *W. 2.* gave Lands to hold in Fee-farm, rendring the Value, or the third Part, &c. that he held of the Feoffor and his Heirs, although that no Tenure was expressed therein. And the Statute of *Gloucester* was made *Anno 6 Ed. 1.* and the Stat. of *Westm. 2.* made *Anno 30 Ed. 1.* and the Statute of *Quia emptores terrarum*, was made *18 Ed. 1.* And therefore if a Man maketh a Feoffment in Fee at this Day, to find Tapers burning, or to render the third Part of the Value, or

Writ of Contra formam Collationis.

the like Services, he shall have an Action of Covenant upon that Feoffment, if it be made by Deed indented, and no other Remedy for the same, as I conceive.

And if Land be given before the Time of Memory to find a Chaplain to sing in his Chapel within his Manor every Week; now by the Statute no Man shall have a *Cessavit* for the Cessor of such Service, but the Donor or his Heir; but upon that special Matter, he shall have a special Writ for him who is seised of the Manor, if he and his Ancestors have been seised of the Manor Time out of Mind, against him who ought to do Service. *T. Anno 7 H. 2.*

And a *Cessavit* doth not lie against an Abbot or Prior for a Cessor of Services of Lands which they hold in *Frankalmoigne*, because no Service certain is expressed in the Gift. Also it appeareth before the Statute, that the Lord could not have a *Cessavit* against the Tenant, but that he might seize the Lands for the Arrearages of the Rent or Services by Judgment of the Court, if it were found that they were behind, *Quod vide P. 20 H. 3.* But at this Day he cannot do so, but bring a *Cessavit*. *10 H. 3. Cess. 60.*

Writ of Contra formam Collationis.

THE Writ of *Contra formam Collationis* lieth, where a Man giveth (a) Lands or Tenements to an Abbey, or other House of Religion before the Statute of *Quia emptores terrarum*, to hold of him in *Frankalmoigne*, and afterwards the Abbot or the Convent do alien the same Land unto (b) another in Fee. Now he who gives the Land, or his Heir, may sue this Writ of *Contra formam Collationis*.

VI 2 & 3 Ma. Dyer 109. Yet it seems by Br. Alienation 15. That Bishop Dean and Chapter, and others who are not religious, are not within this Statute. 40 Ed. 3. 27. The Writ doth not lie but where the Land is given in *Frankalmoigne*.

[211.] (c) The Donor or his Heir may sue that Writ of *Contra formam Collationis*, and that Writ always ought to be sued against the Abbot who aliened, or his Successor, and not against the Tenant of the Land. But when he hath recovered the Land against the Abbot or his Successor, then he ought to sue forth a *Scire facias* against the Tenant of the Freehold of the Land, and the Tenant may plead in bar Matter, which may prove that the Demandant hath no Title, or that he hath released his Title. And if he who recovereth by the *Contra formam Collationis* doth enter upon him who is Tenant of the Freehold of the Land, then it seemeth the Tenant shall have an Assise against him.

(a) So it extends to Lands given by others, as well as to those given by the Founder; *contr.* 33 H. 6. 6. *per Moyle.*

(b) See 24 Ed. 3. 71. It seems, that if a Tenant in *Frankalmoigne* of an Advowson of the King, aliens for nine Shillings, the King may present. *Dyer 109.* Alienation in Tail is within the Statute.

(c) See 18 Ed. 3. 5. 2 H. 4. 12. that it does not lie against the Successor, upon the Words of the Writ given by the Statute; *per Thirn. and Hankf.*

- C And that Writ of *Contra formam Collationis*, lieth only for him or his Heirs, who gave the Land in *Frankalmoigne*, and not by any Stranger. But if he who ought to have the Action dieth, and doth not bring any Action for the same, yet his Heir may bring the Action for to recover the Land. For the Alienation doth give Right and Title to him who gave the Lands, or unto his Heirs for to recover the Lands, and to have the Lands again for that Alienation. And it lieth against the Successor upon an Alienation made by his Predecessor. And yet such Writ brought against the Successor, upon the Alienation made by the Predecessor, was abated, *H. 17 Ed. 3.* But yet notwithstanding it seemeth the Writ well lieth, because that the Right is given to him who gave the Lands, and unto his Heirs, to have the Lands again by the Statute, and that Right cannot die. For the Heir shall have the Action upon the Alienation made in the Life of the Father, because the Right of the Action doth descend, and by the same Reason the Heir of the Donor shall have the Action against the Successor upon Alienation made by the Predecessor, because the Right doth accrue to the Donor or his Heir by Alienation, for which Cause it is Reason that he have the Action against the Successor to recover that Right, and to prove the same; the Form of the Writ in the Register is such:

Contra formam Coll. 12 H. 4. 17. Hankford contra to Fitz-Herb.

The King to the Sheriff, &c. Command the Abbot of N. that, &c. he render to B. one Messuage, &c. which was given to the same House in Frankalmoigne by the aforesaid B. or by H. the Father of the aforesaid B. whose Heir he is, and which by the Alienation by him the said Abbot, or by R. some time Abbot of N. the Predecessor of the aforesaid Abbot against the Form of the Collation, thereof made in Fee, ought to revert to the aforesaid B. as he saith, &c. and unless, &c.

And that Writ of *Contra formam Collationis* doth not lie, although the Abbot alien in Fee, &c. but where the Abbot and Convent in Fee, &c.

21 H. 4. 63. Hankford

- E And if a Man do recover in Value Lands against an Abbot, who entreth in the Warranty and loseth, &c. the Founder shall have a *Contra formam Collationis* upon the same, as it appeareth in the Book. *M. 45 Ed. 3. 19.*

Old Ass. 14. It lieth of a Rent.

- F If an Abbot and Convent alien an Advowson in Fee, at the next Avoidance the Founder or his Heir may present unto the Advowson, because they cannot sue a *Contra formam Collationis*. *20 Ed. 3. Con. form. Coll. 6.*

28 Ed. 3. Contra formam Collationis 6.

- G (a) And if an Abbot and Convent alien the Lands which are given by the King in *Frankalmoigne*, some say that the King may enter; but it seemeth that he ought for to sue forth a *Scire facias* upon an Office found of the said Alienation. See the Case, see *M. 45 Ed. 3. 18.*

- H (a) And that Writ of *Contra formam Collationis* is given by the Statute of *Westm. 2. cap. 41.* and the Process is Summons, *Grand Cape* and *Petit Cape*. *33 H. 6. 6. con.*

- I And a Writ of *Contra formam Collationis* lieth as well for Land which was not given for the Foundation of the Monastery, if it were given in *Frankalmoigne*, as for Lands of the Foundation; but it ought for to be given in

33 H. 6. 6. Litt. 31. 10 H. 7. 23. 27 H. 26.

(a) Note; The King as Founder shall have the Benefit of this Statute on an Alienation made by the Bishop, with Consent of the Dean and Chapter in Fee-farm. *Dyer 109. 38 H. 8. c.*

30. and 35 H. 8. c. 15. See the Proviso there on Erection of a new Chapter. *Quare, 5 Co. cited in the Margin of Dyer ibid.*

Writ of Formedon in the Descender.

Frankalmoigne before the Statute of *Quia emptores, &c.* For a Man could not give Lands after the Statute of *Quia emptores, &c.* unto an Abbot or Prior to hold in *Frankalmoigne*, because he ought to hold of the Lord Paramount, of whom the Tenant held before. But the King at this Day may give Lands in *Frankalmoigne* to an Abbot or Prior, for that he is not bound by the Statute. And also the King may license his Tenant to give Lands unto an Abbot or Prior in *Frankalmoigne* in Fee-simple, to hold in *Frankalmoigne*; for he may dispence with the Statute, and grant such Authority to his Tenant if he will. But it seemeth another Lord cannot grant such Licence to his Tenant, by Reason of the Interests of the Lord Paramount: But the King and all the mesne Lords together may grant Licences unto the Tenants Paravail, who have the Fee of the Lands, that they may alien the same to an Abbot or Prior to hold of him in *Frankalmoigne*, or to grant the same unto a lay Person, to hold of him by certain Services, because that the Statute of *Quia emptores, &c.* was made only for the Advantage of the Lords, and therefore they all may dispence with the Statute, which see *t. Contra formam Collationis, Lib. d' Ent.* 119. And there it appeareth, that the Heir shall have the Action against the Successor of the Abbot, who aliened in the Time of his Ancestor.

Writ of Formedon in the Descender.

THE Writ of Formedon in the Descender is grounded upon the (a) Statute of *Westm. 2. cap. 41.* and lieth where a Man giveth Lands to one, and the Heirs of his Body begotten: Or unto a Man and a Woman, and to the Heirs of their Bodies begotten; or unto a Man and a Woman who is his Cousin in Frank-marriage, by (b) Force of which Gift they are seised, and afterwards he alieneth those Lands, or is disseised of them, and dieth; his Heir shall have that Writ of Formedon in the Descender to recover those Lands given in Tail.

(a) A Formedon lies for a younger Son inheritable by the Custom, and he shall have a general Writ, but a special Count. 13 H. 4. *Garranty* 94.

(b) A special Writ was on the Reservation of an Estate tail by a Fine which is recited in the Writ, 14 H. 4. 31. 1 H. 5. 10. and see there that he need not shew the Fine. 2 H. 5. 4. See a special Form of a Writ on a Feoffment to the Uses of the Feoffor and the Heirs of his Body, and it recites the Feoffment to Uses; and also the Statute of 27 H. 8. in the Writ (which had been better in the Count). *Fijb ver. Brocket, Dyer* 181.

Note; If A. recovers Land against B. by For-

medon in Descender of the Gift of C. where there is no such Gift, and dies: If the Issue brings a Formedon against a Stranger, and the Gift is traversed, it shall not maintain the Recovery, because he who recovers by Supposal comes in paramount the Tenant: But it is otherwise on a Recovery in Value by Warranty; for there he against whom the Recovery is, is as Donor. *Kelw.* 123.

Note; On a Feoffment to the Use of one in Tail the Writ shall be general, and the Count special, *Rast.* 339. and on a Demise, or a Recovery in Value, both the Writ and the Count shall be general; but there must be a special Replication. 15 Ed. 3. *Brief* 324.

And

And so upon every Gift in Tail of Lands or Tenements, if the Ancestor doth alien the Lands or Tenements, or be disseised or deforced thereof, and dieth, he who is Heir unto the Lands by Force of the Gift shall have that Writ of Formedon in the Descender against him who is Tenant of the Lands or Tenements, or Pernor of the Profits of the same Lands or Tenements. But that Writ against the Pernors of the Profits is given by the Statute of *Anno 1 H. 7. cap. 1.*

A And in special Case a Man may have a Formedon in the Descender of the Profit apprender in any Lands or Tenements, or issuing out of any Lands or Tenements: As if a Man grant twenty Shillings or twenty Pounds, issuing out of any Land or Tenement, unto a Man and the Heirs of his Body begotten, or unto a Man in Frank-marriage with his Daughter. Now if the Donee alien that Rent, or is disseised of the Rent, and dieth, his Heir, who is his Son or Daughter, shall have the Writ of Formedon in the Descender of that Rent.

1 Inst. 21. b.
22 R. 2. Dif-
contin. 50.

B (a) And so if a Man grants the Moiety of the Profits arising out of his Mill unto another Man, and the Heirs of his Body, and the Donee dieth, and his Heir is deforced of the Profits, the Heir shall have a Formedon in the Descender for those Profits; and the Form of the Writ is such:

The King to the Sheriff, &c. Command W. Master of the Hospital of Saint Thomas the Martyr of S. that, &c. he render to I. C. the Moiety of the Issues forth coming of two Mills of him the said Master in M. which B. some time Master of the Hospital, &c. gave to W. of C. and the Heirs of his Body issuing, and which after the Death of, &c.

And so it seemeth, that (b) if a Man granteth to one and the Heirs of his Body, Pasture for twenty Oxen, or for an hundred Sheep, &c. and the Donee die, and his Son, who is his Heir, is deforced thereof; then he shall have a Formedon in the Descender; and the Writ shall be,

The King to the Sheriff, &c. Command, &c. that, &c. he render to A. B. Pasture for twenty Oxen and one hundred Sheep in one hundred Acres of Land in M. which, &c.

But if a Man granteth Common of Pasture to one and the Heir of his Body begotten, which hath Cattle, and the Donee dieth, and the Heir is deforced of the Common, the Heir shall not have a (c) Formedon in the Descender of the Common, but a *Quod permittat*, in the Nature of a Formedon, and shall count upon the Gift and the especial Matter. But the Writ of Formedon is an Action auncestrel: For if he who is seised by Force of the Tail be disseised of the Land, he shall have an Assise of *Novel Disseisin*, or an Action of Trespass, at his Pleasure, and not a Formedon. And what Manner of Gift shall be said a Gift in Tail, and what not, appeareth by Mr. *Littleton* in

Ant. 124.
42 Ed. 3. 20.
44 Ed. 3. 40.
contr. but it is
otherwise in a
Formedon.

(a) See 16 Ed. 3. *Formedon* 29. and it shall bind the Eplees in taking the Corn, &c. and see there supposed that the Corn Mill be turned into a Fulling Mill, and he demands the Profits; yet if Livery had been, he might have demanded the Moiety of the two Mills. 45 Ed. 3. *Eschevments* 90. *Dover* 50. See such a Formedon awarded good, 18 Ed. 3. 56.

(b) See a good Diversity herein, 27 H. 8. 12. *per Swelby*, 4 Ed. 2. *Brief* 793, 794.

(c) See a Formedon in Descender of a Serjeanty of the Cathedral of *Lincoln*, brought against the Bishop there, and one J. S. and adjudged good without being forced to a *Quod permittat*. 18 Ed. 3. 27.

his Chapter of Estate-tail; and therefore it is not necessary to express the same here. But the Forms of the Writs of Formedon are many, as appeareth by D the Register, thus:

Vide 2 Eliz.
Dyer 216.

The King to the Sheriff, &c. Command A. that, &c. he render to B. the Manor of N. with the Appurtenances which C. gave to D. and E. his Wife, and the Heirs of the Bodies of them the said D. and E. (a) issuing, and which after the Death of the aforesaid D. and E. ought to descend to the aforesaid B. the Son and Heir of the aforesaid D. and E. by the Form of the Gift aforesaid, as he saith, and unless, &c.

22 H. 6. 36.

(b) And if the Gift be made in Frank-marriage, then the Form of the Writ E is such: *Which C. gave to B. in Frank-marriage with the Daughter of the same C. and which after the Death of the aforesaid D. and E. ought to descend to the aforesaid B. the Son and Heir of the said D. and E. &c.*

49 Ed. 3. 21.

48 Ed. 3. 7.

11 H. 4. 72.

46 Ed. 3. 9.

2 H. 4. 19.

(c) And in this Writ of Formedon he ought for to make Mention of every F Man who was seised by Force of the Tail, and to name him Son and Heir in his Writ, in this Manner: *And which after the Death of the aforesaid D. and E. and F. the Son and Heir of them the said D. and E. ought to descend to the aforesaid B. the Son and Heir of the same F. &c.*

49 Ed. 3. 21.

11 H. 4. 72.

11 H. 7. 3.

8 Ed. 3. 11.

46 Ed. 3. 9.

27 Ed. 3. 81.

But if any of the Heirs in Tail were not seised by Force of the Tail, but G over-live their Father, and die before that they enter into the Land, or have any Seisin thereof; then they need not for to name them Heirs in the Writ, but only in this Manner:

And which after the Death of the aforesaid D. and of E. the Son of the same D. and of F. the Son of the aforesaid E. ought to descend to the aforesaid B. the Son of the aforesaid F. (d) and Cousin and Heir of the aforesaid D. &c.

11 H. 6. 20.

8 Ed. 2. 11.

22 H. 6. 36.

5 Ed. 3. pl 67

And so he ought always to make the Demandant Cousin and Heir, or Son H and Heir to him (e) who was last seised of the Tail, as the Case is; and the surest Way for the Demandant is, to make every Man who is named in the Writ,

(a) *Quod dedit B. & C. uxori ejus & hæredibus quos idem B. de Corp' ipsius C. procrearet, & quæ post mortem præd' B. & C. & D. filii hæredis eorum B. & C. de corpore ipsius C. per ipsam B. procreat, &c.* And held good on such a special Gift, or otherwise he might have had this special Writ here. 3 Ed. 3. 32. 12 H. 4. 1. adjudged. And Note; If the Writ be *ad præsal'* B. it shall abate. 15 Ed. 2. Brief 818.

(b) It seems that the Issue after the fourth Degree may have a Formedon, supposing the Gift to be general; or he may suppose it made in Frank marriage. 12 H. 4. 9.

(c) A. the Great Grandfather was seised, but not B. the Grandfather; but D. the Father was afterwards seised, and E. the Son brings a Formedon, and made each one Heir to the other, and held good: Or he may say, *Eo quod post mortem A. & B. filii dicti A. & C. filii dicti B. consanguinei & hæredis dicti A. præfato D. filio & hæredi dicti C. descendere debet, &c.*

(d) So Note; In this Writ he shews *Cosinage,*

or Consanguinity; but in a *Scire facias* it is sufficient if he shews it *dehors*, 8 H. 4. 21. *Et quod post mortem B. & A. filii & hæredis prædict' B. & C. filii & hæredis ejusdem B. & D. consanguinei & hæredis prædict' C. &c.* and it was abated by Award; *contr.* if he had shewn how Cousin in his Count, 12 H. 4. 1. 49 Ed. 3. 21. 38 Ed. 3. 24. See 5 Ed. 2. Formedon 51. *contr.* 11 H. 6. 43. 31 Ed. 3. Brief 338. it is necessary that he convey himself Heir to the Donee in the Writ, and not in the Count only, 11 H. 6. 21. A Gift was to the Grandfather, and to the Heirs of the Body of the Great Grandfather; he ought to make the Demandant Cousin and Heir to the Great Grandfather, or else each one Son and Heir to the other. Dyer 247.

(e) See 39 Ed. 3. 10. accordant. Note; In a Formedon the Demandant ought to make himself Heir to the Donee; and for this see 11 H. 6. 41. *Et quæ post mortem A. & B. filii & hæredis dicti A. & C. filii B. præfato (the Demandant) filio & hæredi dicti C.* and it was abated

Writ, Son and Heir in the Writ, although they were not seised of the Lands by Force of the Tail; for it is not material whether they were seised or not, although he name them Heir in the Writ; *quod vide Anno 8 and 11 H. 6.*

I And if Tenant in Tail hath Issue two Sons, and dieth, and a Stranger abateth, and entreth into the Land; and afterwards (a) the eldest Son dieth before he entreth into the Land, the youngest Son shall have a Writ of Formedon in the Descender, and needeth not name his eldest Brother Heir to his Father in the Writ, but only Son, because he never had Seisin of the Land, but only held the Estate; but if the eldest Brother had entred, and was seised by Force thereof, and died without Heir of his Body; then the youngest Son who is his Brother and Heir, ought to mention the eldest in the Writ, and him Son and Heir to his Father, and to make himself Brother and Heir unto him. [213.]

A And if the Heir in Tail be seised by Force of the Tail or not, and after N. Br. 141, enter into Religion, and be professed, then his (b) Heir shall have a Writ of Formedon in the Descender in such Form: ^{144.} Ant. 196.

And which after the Death of the aforesaid D. and after that E. the Son and Heir of the aforesaid D. took upon him the religious Habit, in which Habit he was professed, as he saith, ought to descend to the aforesaid B. the Son and Heir of the same E. &c.

But if the Father maketh a Feoffment in Fee, or leaseth the Land for Life, and entreth into Religion, and is professed: Yet his Heir shall not have a Formedon in the Descender, *quia habitum religionis assumpsit, &c.* during the Father's Life, because the Father may lawfully give his Lands during his Life; and after the Death of the Father, he may bring his common Writ of

by Award. 1. Because he did not make himself Heir to him who was last seised. 2. Because when B. is supposed the only Son and Heir, you shall not make the Writ repugnant. 3. Because the Writ does not make him Heir to the Donor; for it may be that C. was a younger Son; and therefore by *Martyn*, A. the Grandfather Donee is seised, B. the Father being Son and Heir of A. and C. the Son of B. *præfate* the Demandant, *filio & heredi* C. is not good, altho' he makes himself Heir to him who was last seised.

(a) And see accordingly adjudged, that he need not name him Heir, or make the younger Son, who is the Demandant, Heir to him; but there ought to be Mention of him in the Writ and Count, because he survived his Father. 4 *Ed. 2. Formedon* 48. Yet it seems it is in the Election of the Demandant to mention his Brother that survived, but held not the Estate, and held, that the one Writ or the other is good enough, 11 *Ed. 2. Formedon* 56. 11 *H. 4. 7. 28 Ed. 3. 11. per Herle, 7 H. 6. 16.* accordant; but in a Writ of Right it is necessary that he be mentioned, 18 *Ed. 2. Formedon* 59. *con. in Mortdauncestor*, and this is a good Writ, &c. in Right and Possession.

See 10 *Ed. 2. Descents* 16. that the younger Son need not mention the Issue in this Case. So 35 *Ed. 3. Garranty* 75. 4 *Ed. 2. Formedon* 40. *con.* 11 *Ed. 2. pl. 56.* 12 *Ed. 2. Entry* 8. 35 *Ed. 3. Garranty* 73. that he who seised, shall be said to hold the Estate, and no other. So 46 *Ed. 3. 39. 42 Ed. 3. 20. and 37 H. 6. Brief* 132. But 31 *Ed. 1. Descent* 315. *con.* 11 *Ed. 2. Formedon* 56. See *Bro. Omission, &c.* 10. That if the elder Brother dies in the Father's Life-time, the younger Son shall not mention him in the Formedon in Descender or Reverter, 18 *Ed. 2. Formedon* 59. 11 *H. 4. 72. Nat. Br.* 250. So if the Father does not survive the Grandfather, the Son need not mention the Father in his Writ. 5 *Ed. 2. Formedon* 51. 8 *Ed. 2. pl. 54.*

Note; In a *Sci'fa'* to execute a Formedon in Remainder, the Plaintiff was driven to make mention of all those on whom the Land descended in Tail, though they were never seised. 25 *Ed. 3. 44.* See 10 *Ed. 2. F. Descents.*

(b) See according to this Diversity, *Kelw.* 104. yet such Issue shall have Voucher and Age, living his Father, but shall hold the Lands, &c. charged with the Rent granted by his Father. *Ib.*

Writ of Formedon in the Descender.

Formedon, if he will, or that special Writ, *quia habitum religionis assump'*, at his Election, as it seemeth.

And if Tenant in Tail goeth upon Pilgrimage, and dieth in his Journey, B his Heir shall have a Formedon against a Stranger who entreth and abateth; and the Form of the Writ shall be,

And which after the Death of the aforesaid D. and after that E. the Son and Heir of the aforesaid D. took a Journey of Pilgrimage towards Saint James, in which Journey he died, as he saith, ought to descend to the aforesaid B. Son and Heir, &c.

And if Tenant in Tail hath Issue two Daughters, and one of them hath C Issue a Son and dieth, and afterwards the Tenant in Tail dieth, and a Stranger abateth; now the Daughter and the Son of the other Daughter shall have a Formedon in this Form:

That he render to B. and C. one Messuage which D. &c. and which after the Death of the aforesaid E. and of F. one of the Daughters of the same E. ought to descend to the aforesaid B. the other of the Daughters of the aforesaid E. and to B. the Son of the aforesaid E. and Cousin and Heir of the aforesaid E. &c.

And if Tenant in Tail hath Issue two Sons, and dieth, and the eldest Son D entreth, and hath Issue and dieth, and his Issue entreth and dieth without Issue of his Body, then the youngest Son, the Tenant in Tail, shall have such Writ of Formedon, if he be deforced of the Land.

And which after the Death of the aforesaid D. and of E. the Son and Heir of the said D. and of F. the Son and Heir of the said E. ought to descend to the aforesaid B. the Son and Heir of the aforesaid D. and Cousin and Heir of the aforesaid F. (a).

And if a Man give Lands in Tail unto a Woman and the Heirs Males of E her Body, and of R. her late Husband, begotten; if the Woman die, and a Stranger doth abate, her Heir Male begotten by R. her Husband, shall have a Formedon in this Manner:

Which C. gave to D. who was the Wife of R. and to the Heirs Male of the Body of her the said D. and the aforesaid R. some time her Husband, issuing, and which after the Death of the aforesaid D. ought to descend to the aforesaid W. Son and Heir of the same D. of her Body and the Body of the aforesaid R. begotten, &c.

And if a Man give Lands to R. and unto the Heirs which the said R. shall F beget on his first Wife, then the Form of the Writ of Formedon is such:

Which W. gave to R. and to the Heirs which the same R. should beget of his first Wife, and which after the Death of the aforesaid R. and A. the Daughier of G. whom he first married, ought to descend to the aforesaid I. Son and Heir of the same R. of the aforesaid A. his first Wife begotten, &c.

And if a Man give Lands unto a Woman, and unto the Heirs which he G himself shall beget on the Body of the said Woman, and after they have Issue between them two Daughters, and one of them hath Issue a Daughter, and dieth, and after the Donor and Donee dieth, the Aunt and the Niece shall join in a Formedon for that Land, if they be deforced thereof; and the Writ shall be such:

(a) Without saying *Mascul*, for it appears by the Writ, 11 H. 6. 45.

Which R. gave to M. and to the Heirs which he the said R. should beget of the Body of her the said M. and which after the Death of the aforesaid M. and of A. one of the Daughters (a) of the same M. begotten of her Body by the aforesaid R. ought to descend to I. the other of the Daughters of the same M. begotten of her Body by the aforesaid R. and to I. of S. the Son of the aforesaid A. and Cousin and Heir of the same M. &c.

H And if Lands be given to a Man and his Wife, and to the Heirs of their two Bodies, and they have Issue a Son, and die, and the Son is seised, and hath Issue three Daughters, which hath Issue, and die in the Life of their Father, and after one of the Daughters hath Issue, and claimeth in the Life of the Grandfather, and afterwards the Father and three Daughters die, the Coparceners of the three Daughters shall have a Formedon in such Form :

And which after the Death of the aforesaid E. and F. and of W. the Son and Heir of the same E. and F. and of A. M. and K. the Daughters of the aforesaid W. and of Sarah the Daughter of the aforesaid M. ought to descend to the aforesaid A. the Daughter of the aforesaid A. and to John the Son of the aforesaid K. and to W. Son of the aforesaid S. Cousins and Heir of the aforesaid William, &c.

I And if Lands be given to R. and I. and to the Heirs of the Body of R. begotten, and R. hath Issue four Daughters, and he and one of his Daughters enter into Religion, and are professed, and I. dieth ; and afterwards one of the Daughters of R. dieth before they have any Possession of the Lands, and the other two Daughters do survive, and are deforced of the Land, they shall have a Formedon in such Form :

Which T. gave to R. and I. and to the Heirs of the Body of him the said R. issuing, and which (b) after the Death of the aforesaid I. and after that the aforesaid R. and Grace, one of the Daughters of the aforesaid R. took upon them the religious Habit, and in which Habit they are professed, as it is said ; and also after the Death of E. another of the Daughters of the aforesaid R. ought to descend to the aforesaid M. and A. two other Daughters of the same R. &c.

K And if the Reversion of Tenant in Dower be granted to a Man in Tail, and after the Death of Tenant in Dower he is seised of the Land by Force of the Gift, and hath Issue and dieth, and the Issue entreteth and hath a Daughter and dieth, and afterwards a Stranger entreteth, and abateth in the Land, the Heir of the Issue in Tail shall have a Formedon in this Form : [214.]

Which I. of H. holds in Dower of the Inheritance of I. of S. and which the same I. granted to W. of S. to hold to him and the Heirs of his Body issuing, and which after the Death of the aforesaid I. and W. and of R. the Son and Heir of the same W. ought to descend to the aforesaid Isabel the Daughter and Heir of the aforesaid W.

A And if a Man lease Lands for Life, and afterwards grants the Reversion in Tail, and then Tenant for Life dieth : Now if a Stranger abate in the Land, the Grantee in the Reversion shall have such Writ :

(a) Without saying (*Et R.*) because he had nothing in the Tail : But if on the shewing it happens to appear, that R. was Tenant by the Curtesy, thereon shewing the Writ *Post mortem*

R. & M. shall be well enough. 20 *Ed.* 3. *Brief* 377.

(b) Note ; The Death of R. ought to be shewn, or else the Writ shall abate, *Commendament.* 11 *H.* 6. 28.

Writ of Formedon in the Descender.

Which I. gave to P. for his Life, and which the same I. granted to the aforesaid F. and the Heirs of his Body issuing, to have after the Death of him the said P. and which after the Death of the aforesaid P. ought to remain to the aforesaid F. by the Form of the Gift and Grant aforesaid, &c. (a).

And if a Man lease Lands for Term of Life, and afterwards grants the Reversion in Tail by Fine unto a Man and his Wife, and unto the Heirs which he shall beget on the Body of his Wife, and afterwards the Tenant for Life dieth, and the Husband and Wife enter, and are seised by Force of the Tail, and die, and a Stranger abateth and entreth into the Land; the Heir shall have a Formedon, thus:

Which A. gave to B. for the Life of him the said B. by a Fine thereof in the Court of Lord E. some time King of England, before C. and his Companions then Justices, &c. by his Writ levied, granted to D. and E. his Wife, to have after the Death of the said B. to them the said D. and E. and the Heirs which the same D. should beget of the Body of her the said E. and which after the Death of the aforesaid B. D. and E. ought to descend to the aforesaid F. the Son and Heir (b) of the aforesaid D. and E. of the Body of the said E. by the aforesaid D. begotten, by the Form of the Gift and Fine aforesaid, as he saith, &c. (c).

(a) It seems he may have a general Writ in this Case. 11 H. 6. 21.

(b) See the like Writ awarded good, 11 Ed. 3. Brief 474. 41 Ed. 3. Brief 459.

(c) *In what Manner Esplees shall be alledged in a Formedon.*

In a Formedon in Remainder it is sufficient to alledge the Esplees in him who was seised by the Gift, without alledging them in the Donor; *quod vide* 9 H. 6. 53. 11 Ed. 3. Formedon 31. yet the Count is not the worse, if they are alledged in the Donor, 8 Ed. 3. 59. *Rast. Entr.* 369. 27 Ed. 3. 84. and the Reason in this Case and in Formedon in Descender, is, for that the Count shews a Seisin in the Donor. 15 Ed. 4. 17. In a Formedon in Descender, if A. gives to B. for Life, Remainder to C. in Tail; B. dies, and C. enters and dies, and the Issue brings Formedon in Descender; and held, 1. In no Case in Formedon in Descender is it necessary

to alledge Esplees in the Donor; but where it is so, he is not prejudiced. 8 Ed. 3. 19. 10 Ed. 3. 5. 2. He may have in this Case a general Writ, supposing the Gift to be immediately to C. and then it is sufficient to alledge Esplees in C. without Doubt. 9 H. 6. 53. 44 Ed. 3. 18. 3. He may count on the special Matter, and then ought to alledge Esplees in B. and also in the Donee, 11 Ed. 3. Formedon 32. 8 Ed. 3. 19. *Rast. Entr.* 363. yet see a Formedon in Descender, where a Reversion was granted in Tail, bound the Esplees in such special Writ in the Donor, 5 Ed. 3. 17. 4 Ed. 3. 45. and also in the Lessee for Life, and in the Grantee in Tail. 4. A Formedon in Reverter ought to alledge Esplees in the Donor, 9 H. 6. 53. and also in the Donee.

Note; In a *Scire facias* to execute a Remainder, the Plaintiff was driven to make mention of all those on whom the Land descended in Tail, although they were not seised. 25 Ed. 3. 44. See 10 Ed. 2. *Descents*.

Another Writ of Formedon in the Descender.

B THERE is another Writ of Formedon in the Descender, which is called a Writ of Formedon of Land, which he holdeth in Coparcenary, and that Writ lieth properly where Tenant in Tail dieth seised, and hath Issue many Daughters, and they enter, and make a Division and Partition of the Land betwixt them, and one of the Coparceners after the Partition doth alien her Part, and dieth; her Heir shall have that Manner of Writ of Formedon, and that Writ lieth for Lands given in Frank-marriage, as well as for other Lands given in Tail.

And if Lands in (a) Gavelkind be intailed, and descend to many Brethren, as Heirs to their Father, and they make Partition betwixt them of the Lands, and afterwards one alieneth his Part, and dieth, his Heir shall have a Formedon of that which they held in Parts; and the Form of the Writ is such:

The King, &c. Command A. that, &c. he render to B. eighty Acres of Land with the Appurtenances in D. which (b), together with other eighty Acres of Land with the Appurtenances in the same Town, L. gave to T. in Frank-marriage with I. the Daughter of the aforesaid L. and which after the Death of the aforesaid T. I. and of M. the Daughter and one of the Heirs of them the said T. and I. (who held them for her Purparty falling to her of the aforesaid one hundred and sixty Acres of Land, by Partition between her the said M. and R. the Sister of the same M. the Daughter and other Heir of the aforesaid T. and I. thereof made) ought to descend to the aforesaid Son and Heir of the said M. &c.

C And if two Coparceners be Tenants in Tail by Descent from their Father or Mother, and afterwards they make Partition, and one Coparcener hath Issue, and dieth, and the other Coparcener dieth without Issue, the Heir of that Coparcener who hath Issue shall have a Formedon in this Form:

And which after the Death of the aforesaid T. and I. and of K. the Daughter and one of the Heirs of them the said T. and I. (who held the same for her Purparty falling to her of the aforesaid one hundred and sixty Acres of Land, by Partition between her the said K. and M. the Sister of the same K. the Daughter and other Heir of the aforesaid T. and I. thereof made) and of the aforesaid M. ought to descend to the aforesaid G. the Son of the aforesaid M. and Cousin and Heir of the aforesaid K. &c.

And it appeareth by the Register, that a Man shall have a Writ of Formedon of Land which he held in Partition by the Name of the Moiety in special Cafes; as where two Coparceners are Daughters of Tenant in Tail, and they make Partition between them of the Land, and afterwards one Sister dieth without Issue, and the other Sister alieneth the Land, and hath Issue and dieth; the Issue of the Coparcener who had Issue, shall have a Formedon of all the Land in Tail in this Form:

(a) He ought to shew in his Count, that the Tenements are partible, but not in the Writ.

¹¹ H. 6. 44.

(b) Note; The Form of the Writ, when all

the Lands in Fee-simple are allotted to the elder Son, and all the intailed Lands to the younger, who aliens and dies, without saying *una cum*, &c. 20 H. 6. 13.

Another Writ of Formedon in the Descender.

The King to the Sberiff, &c. Command F. that, &c. be render to H. ten Messuages and twenty Acres of Land with the Appurtenances, &c. which I. gave to A. and the Heirs of his Body issuing, and which after the Death of the aforesaid A. and of M. the Daughter and one of the Heirs of the same A. who held a Moiety of the aforesaid Messuages and Lands for her Purparty, and of B. the Daughter and the other Heir of the aforesaid A. who held the other Moiety of the same Messuages and Lands for her Purparty, by Partition thereof between them made (which said B. as Sister and Heir of the said M. held the Moiety aforesaid falling to the aforesaid M. after the Death of the said M.) ought to descend to the aforesaid H. the Son and Heir of the aforesaid B. &c.

And the Writ is good, because by the Death of one Sister without Issue the Partition is made void, and the other shall have the whole Land as Heir in Tail.

[215.] And if a Man give Lands in Tail unto *I.* his Daughter, and to the Heirs of her Body, and *I.* hath Issue two Daughters, and dieth, and they enter and make Partition between them, and afterwards one of the Daughters hath Issue two Daughters, and one of the two Daughters hath Issue four Daughters, and die, and afterwards the Aunt who was one of the Daughters of the Donee dieth without Issue, &c. and a Stranger abateth; the four Daughters, and the Issue of the other Sister, shall have a Formedon in such Form:

That, &c. be render, &c. three Messuages, one hundred Acres of Land, and twenty Acres of Meadow, and one hundred Skillings Rent, with the Appurtenances in N. which together with the Manor of B. with the Appurtenances, A. gave to I. his Son and to the Heirs of his Body issuing, and which after the Death of the aforesaid I. and of C. the Daughter and one of the Heirs of the same I. (who held the same for her Purparty falling to her after the Death of the aforesaid I. of the said Manor, Messuages, Land, Meadow and Rent, by Partition between her the said C. and D. the Daughter and the other Heir of the same I. thereof made) and of the aforesaid D. and of A. and E. the Daughters of the said D. ought to descend to the aforesaid Margaret, Margery, Katherine and Constantine, the Daughters of the aforesaid A. (and T. Son of the aforesaid E.) and Cousins and Heirs of the aforesaid C. &c.

And if the Moiety of any Land be given to the Husband and Wife, and A unto the Heirs of their two Bodies begotten, and they have Issue four Daughters, and die, and the Sisters enter and make Partition betwixt them, and afterwards the two Sisters die without Issue, and the third Sister alieneth, and dieth without Issue; the fourth Sister shall have a Formedon in this Form:

And which after the Death of the aforesaid Roger and Agnes, and of Alice B the younger Daughter and one of the Heirs of them the said Roger and Agnes, (which same Alice the younger held the said fourth Part for her Purparty falling to her of the aforesaid Moiety, by Partition between her and Isabel and Alice the elder and the aforesaid Maud, the Daughters and three other Heirs of the aforesaid Roger and Agnes his Wife, thereof made) and of the aforesaid Isabel Daughter of Roger, and of Alice the elder, ought to descend to the aforesaid Maud the Sister and Heir of the same Alice the younger, &c.

And to make a full Declaration of the Case of Formedon in the Descender, upon which the Writ is founded, it is necessary to have the Pedigree made in the Writ, which you shall see here following:

Henry

Writ of Infimul tenuit.

Daughter of Alice, and of Joan one of the Daughters of the aforesaid Maud, ought to descend to the aforesaid Margaret the Wife of William, the third of the Daughters of the aforesaid Alice, to Henry Gifford Son of the aforesaid Roger, and to Thomasin the Wife of the said James, and to Joan the Wife of the said John, and to Margery the Wife of the said Thomas, the other Daughters of the said Maud, and to Ralph the Son of the said Isabel Daughter of Maud, and Cousin and Heir of the aforesaid John the Brother of John, &c.

Another Writ of Formedon in the Descender, called Infimul tenuit.

THERE is another Manner of Writ of Formedon in the Descender, A which is called *Formedon qui infimul tenuit*; and that Writ lieth by one Coparcener, or by one Heir in Gavelkind of Lands intailed, where they hold the Lands intailed in Coparcenary without any Partition made between them of the same, and afterwards one Coparcener doth alien her Part unto a Stranger in Fee, and dieth without Issue, or hath Issue, and dieth; or if she dieth seised, and hath Issue, and a Stranger doth oust the Issue, or the other Coparcener doth put out the Issue, the Issue, or he who is Heir to the Tail of those Lands, shall have that Writ of Formedon against the Stranger, or the other Coparcener, who deforced her of the Land.

The King to the Sheriff, &c. Command the Abbot of Westminster, &c. that, &c. he render to B. and I. his Wife, two Parts of thirty Shillings Rent of one thousand white Loaves of Bread of the Price of twenty Shillings, and of five Flaggons of Ale of the Price of ten Pence, with the Appurtenances in B. which together with a third Part (a) of the same Shillings Rent, Bread and Ale, with the Appurtenances in the same Town, A. gave to G. and B. his Wife, and to the Heirs of the Bodies of them the said G. and B. issuing, and which after the Death of the aforesaid G. and B. and of R. the Son and Heir of them the said G. and B. and of T. the Daughter and Heir of the same R. and of W. the Son and Heir of the same T. and of M. the Son and one of the Heirs of the same W. (who held those two Parts and the said Part together with K. the Daughter and the other of the Heirs of the aforesaid W.) and of D. Daughter and Heir of the same M. and of the aforesaid K. Aunt of the aforesaid C. and of F. Daughter of the same K. ought to descend to the aforesaid I. the Daughter of the aforesaid F. and Cousin and Heir of the aforesaid D. by the Form of the Gift aforesaid, &c.

And by that Writ it seems, that I. is seised of the third Part of those Rents; B and bringeth this Writ of two Parts of that Rent.

And there is another Writ of Formedon and *Infimul tenuit*, where he shall make his Demand by the Name of the Moiety, and that is where one Coparcener is deforced of her Part, and the other Coparcener is in Possession of her Part; and the Writ is such:

(a) Note; These Words are necessary. 5 H. 5. 8.

Command the Abbot of Westminster that, &c. he render to B. and I. his Wife, the Moiety of thirty Shillings Rent, and of the Rent of a Thousand white Loaves of Bread of the Price of ten Shillings, and of five Flaggons of Ale of the Price of ten Pence, &c. with the Appurtenances in the City of Westminster, which together with another Moiety of the same thirty Shillings Rent, and of the Rent of Bread and Ale, with the Appurtenances in the same City, A. gave to G. and B. his Wife, and to the Heirs of the Bodies of them the said G. and B. issuing, and which after the Death of the said G. and B. and of F. the Son and Heir of the same G. and B. and of T. the Son and Heir of the same F. and of W. the Son and Heir of the same T. and of R. the Son and one of the Heirs of the same W. (who held the same, and the aforesaid other Moiety, together with M. the Daughter and the other Heir of the aforesaid W.) and of E. the Son of the same R. ought to descend to the aforesaid I. the Daughter of the aforesaid E. and Cousin and Heir of the aforesaid R. &c.

C And it appeareth by that Writ, that one Coparcener shall have the Writ of Formedon in the *Infimul tenuit* against a Stranger upon the Possession of his Ancestor, without naming the other Coparcener who hath her Part in Possession.

And if a Man do bring a Formedon in the Descender upon the Seisin of his Brother, and as Heir to his Brother; he shall not mention in the Writ, that his Brother is dead without Issue: But if a Man bring a Formedon in the Descender as Cousin and Heir to him, he ought to mention in the Writ how he is Cousin an Heir to him, and he ought to make himself Heir to him who was last seised, and that by the same Writ.

D And a Man shall have a Formedon in the Descender upon a Gift in Tail made after the Statute *de Donis*, if the Alienation be made after the Statute, and not before.

E And if Lands in Tail descend to two Coparceners, and one entreteth into the whole, and the other hath Issue and dieth, and she which entreteth into the whole dieth without Issue, the Issue of the other Coparcener shall have several (a) Writs of Formedon, one of Seisin of the Grandfather, and in that Writ he shall not say *Infimul tenuit*, &c. because her Mother was never seised; but of the other Moiety of the Land of the Seisin of her Aunt, the Writ shall say,

F *Qui infimul tenuit* with her Mother; for that Seisin was a Seisin to her Mother, if he would, &c. And if one Coparcener after the Death of the Ancestor enter into the whole, and alieneth in Fee, and dieth without Issue, the other Coparcener shall demand the Moiety as Heir unto her Father, and the other Moiety as Heir unto her Sister.

(a) See accordingly adjudged, 40 Ed. 3. 8. where the Case is, Donee in Tail had Issue two Daughters A. and B. A. enters into the Whole, and aliens in Fee, and dies without Issue, B. has Issue C. and dies, C. brings a Formedon, *Quæ post Mort. A. Donee and B. filie* of the Donee *descend' debet* to the Demandant (of one Moiety) and for the other Moiety, *Quæ post Mort. of the Donee, and A. filie & unus hære-*

dis of the Donee for the one Moiety, and for the other to B. the Heir of A. *qui infimul*, &c. adjudged, 43 Ed. 3. 16, 17. Yet see *per Cur.* 19 H. 6. 45. if the one Parcener enters into the Whole, and after dies, and the other has Issue and dies, the Issue shall have a Formedon against the Tenant in Possession of her Mother, supposing *quod infimul tenuit* with the Aunt, for the Possession of one is the Possession of the other.

40 Ed. 3.
4 Ed. 3. 9
contr. 43
16, 17.
19 H. 6.

[217.] And if the Heirs in Tail of Gavel-kind bring a Formedon in the Descender, **A** the Writ shall be of common Form, as the Writ of Formedon brought by Sisters, and in the Count he shall shew the Custom.

A Formedon shall be brought of Gorfes, but not of an Advowson. **B**

And if Tenant in Tail be indebted to the King in the Exchequer, and dieth; and his Heir entreth into the Lands, and is distrained in the entailed Lands for the King's Debt: Now if the Father's Executors have Assets or Goods, or if the Father hath Lands in Fee-simple in the Hands of others, which he hath aliened; the Heir in Tail shall have a special Writ unto the Treasurer and Barons of the Exchequer, rehearsing the whole Matter; commanding them that they do enquire thereof; and if it be true, that they do **C** surcease to charge him upon the entailed Lands; and the Writ is such:

4 Eliz. 240. b.
acco. dant, but
i. 219. per
B. wn held
contra.

The King to his Treasurer and Barons of the Exchequer, greeting: R. the Son of I. of W. hath shewed unto us, That although he doth not hold Lands or Tenements which were his the aforesaid I.'s, saving twelve Messuages and two Ploughlands in I. with the Appurtenances, which the aforesaid I. and C. his Wife, Mother of the aforesaid R. whose Heir he is, held to themselves and to the Heirs of the Bodies of them the said I. and C. issuing, of the Gift and Grant of the said I. by a Fine thereof levied in the Court of Lord E. &c. our Grandfather, and which after the Death of the aforesaid I. and C. came to the Hands of him the said R. by Virtue of the Fine aforesaid; you nevertheless distrain him the said R. in the Lands and Tenements aforesaid, which are so holden in Fee-tail, for one hundred Pounds to us for Arrearages extended by you of the Manor of Orford, of the aforesaid I. after we took upon us the Government of the Realm; and the Tenements aforesaid, so given and granted to the said I. and C. in Fee-tail, are committed to be rendred, you omitting as well the Inheritance of the aforesaid I. as the Tenants of the Lands and Tenements which were of him the said I. in Fee-simple, which of Right ought to be charged with his Debt, and have sufficient whereof those Debts may be levied, and disquiet and unjustly agrieve him many Ways upon that Occasion, &c. whereupon he hath besought us to provide for him a Remedy: We being unwilling that the aforesaid R. should be injured in this Matter, command you, that if it shall appear to you in a legal Manner, that the Messuages and Lands aforesaid were given and granted to the aforesaid I. and C. in Manner aforesaid, and that he the said R. doth not hold any other Lands and Tenements which were of the aforesaid I. saving the same Messuages and Land, which came to his Hands by Virtue of the Fine, and that the said Heir or the Tenants aforesaid, have sufficient whereof the said Debts may be levied, as is before said, then cause the said R. to be discharged and acquitted of the aforesaid one hundred Pounds towards us, charging those who, thereupon, of Right ought to be charged, as shall be just. Witness, &c.

And by that Writ it appeareth, that if the Heir or the other Tertenants were not sufficient for to pay the Debt, the Lands which the Heir hath in Tail shall be charged; for some say that the King is not bound by the Statute of *Donis*, &c. but that he is in the same Case he was before; *Quere* thereof (a).

4 Eliz. 240.

(a) *Notes*: Stat. 33 H. 8. c. 39. makes the Heir in Tail liable.

And if a Man do alien his Lands in Fee, and afterwards become indebted to the King, &c. If the Alience be distrained for that Debt, he shall have a special Writ to the Treafurer and Barons of the Exchequer, rehearsing the whole Matter, commanding them for to surcease, &c.

And so if a Man be distrained for a Debt or Duty due to the King, as Executor, or as Pledge for him who is the King's Debtor, he shall have a special Writ unto the Treafurer and Barons of the Exchequer to inquire thereof, and to do Right (a).

Writ of Formedon in the Remainder.

D THE Writ of Formedon in the Remainder lieth, where a Man giveth Lands to one in (b) Tail, the Remainder unto another in Tail, and afterwards the first Tenant in Tail dieth without Issue of his Body, and a Stranger doth abate and deforce him in the Remainder; he in the Remainder, or his Heir, shall have that Writ of Formedon in Remainder. And so if the first Tenant in Tail alieneth in Fee, and dieth without Issue of his Body begotten, he in the Remainder in Fee shall have a Writ of Formedon in the Remainder to recover his Estate, &c.

E And if a Man giveth Lands for Term of Life, the Remainder to another, and the Heirs of his Body begotten, and the Tenant for Life dieth, and a Stranger abateth and deforceth him in the Remainder, that he cannot enter, he in the Remainder, or his Heir, shall have a Formedon in Remainder to recover his Estate, &c.

So if a Man make a Gift in Tail, the Remainder in Fee to another, and the Tenant in Tail alieneth in Fee or in Tail, or for Life, and dieth without Issue, he in the Remainder, or his Heir, shall have a Formedon in the Remainder to recover that Land.

And it seemeth the same Law shall be, if a Man lease Lands for Term of Life, the Remainder to another in Fee, and the Tenant for Life doth alien in Fee, or in Tail, or for Life, and dieth, and a Stranger abateth and deforceth him who ought for to have the Remainder; then he in the Remainder, or his Heir, shall have a Formedon in the Remainder to recover that Land; *Quod vide 24 Ed. 3.*

And that appeareth to be but reasonable, because he hath Right for to have the Land; and then it is but Reason that he have an Action for to recover the same: And that appeareth by the Statute of *West. 2. cap. 24.* which willeth, *Quod quotiescunque de cætero evenerit in Cancellar' quod in uno casu reperit' breve, in consimili casu cadente sub eodem jure, & simili remedio indigente; con-*

[218.]

(a) Note; Regularly where Process is by Summons, Attachment, and *Capias* (Diltress) after *Nihil* returned on the Summons, a *Capias* shall issue. 21 H. 6. 56.

Note also; If the original Formedon be returned *Tarde*, the Summons *sicut alias* is instead of a new Original, and there shall be nine Re-

turns between the Tesse and Return, and it shall be a *Si fecerit te Secutum*. *Dyer* 252.

(b) And so it is, if the Issue of the Issue in Tail dies without Issue, for then on the whole Matter, the Tenant in Tail is dead without Issue; by *Dyer* 4 *Eliz.* 233.

Writ of Formedon in the Remainder.

cordent Clerici in Cane' in brevi faciend'. For which it seemeth that such Writs are granted.

And also upon the Statute of *Donis conditionalibus*, there is not the Writ of A Formedon given by express Words, but a Writ of Formedon in the Descender; but yet it was never doubted, but that if a Man make a Lease for Life, the Remainder in Tail to another, that he in the Remainder in Tail, or his Heir should have a Writ of Formedon in the Remainder, after the Death of the Tenant for Life, if he were deforced of the Land; and that is by Equity of the Statute of *Donis*, as it seems: For no Formedon in the Remainder is given by any Statute; and therefore it seems it shall be taken by Equity of the Statute; yet some have doubted thereof; and the Form of the Writ for him who claimeth the Remainder in Fee-simple, after the Estate-tail determined, is such:

The King to the Sheriff, &c. Command A. that, &c. he render to B. one Messu- B
suage, twenty Acres of Land, &c. which C. gave to D. and to the Heirs of his
Body issuing, so that if the said D. should die without Heirs of his Body issuing,
the aforesaid Messuage and twenty Acres of Land with the Appurtenances, should
remain to the aforesaid B. and his Heirs, and which after the Death of the aforesaid
D. ought to remain to the aforesaid B. by the Form of the Gift aforesaid,
because the aforesaid D. died without Heir of his Body issuing, as it is said, and
unless, &c. then summon, &c.

And for the Heir of him upon whom the Remainder was entailed, thus:

(a) *And which after the Death of the aforesaid D. and B. ought to remain*
to the aforesaid I. Son and Heir of the aforesaid B. by the Form of, &c. because
the aforesaid D. died without Heir of his Body issuing, as it is said, and unless,
&c. (b).

And if a Lease be made for Term of Life, the Remainder unto another, C
and unto the Heirs of his Body begotten; now after the Death of Tenant for
Life, if he in the Remainder be deforced of the Land by Abatement of a
Stranger, then he shall have such Writ:

Which A. gave to B. for the Life of him the said B. so that after the Death of
him the said B. the said Messuages, and twenty Acres of Land with the Appurte-
nances, should remain to D. and to the Heirs of his Body issuing, and which after
the Death of the aforesaid B. and D. ought to remain to the aforesaid W. the Son
(c) and Heir of the same D. by the Form of, &c.

2 & 3 Ma.
Dyer 125.
6 Ed. 3. 5.

And if a Reversion be granted to another in Tail, and the Tenant for Life D
dieth seised, and the Stranger abates and enters the Land; the Grantee in Re-
version shall have a Formedon in such Form:

Which G. gave to T. for the Life of him the said T. and which the same G.
afterwards granted to the aforesaid P. and M. some time her Husband, to have
after the Death of the aforesaid T. to the aforesaid P. and M. and to the Heirs

(a) See 5 Ed. 3. 25. 6 Ed. 3. 9. 7 Ed. 3. 4.
The Writ is good without saying *per Mortem B.*
for that is supposed by saying *Filius & Hæres.*
See 11 H. 6. 43.

(b) See 31 Ed. 3. Brief 328. In Descender
in a *Sire facias.*

(c) Note; If he demands as Cousin and Heir

to D he may say *ut consanguineo & hæredi præ-*
diã' D. or he may say, *remanere abet dicto Filio*
& Hæredi G. filii & hæredi dicti D. &c. Ad-
judged int' Frike and Bradford.

Note; The *post Mortem* is sufficient for the
Estate for Life, with out shewing the Death with
the *Et quod, &c.* Dyer 349.

of the Body of them the said P. and M. issuing, and which after the Death of the aforesaid T. ought to remain to the aforesaid M. by the Form of the Grant aforesaid, &c.

E And if A. give a Manor except thirteen Shillings and four Pence Rent to R. and I. his Wife, and to the Heirs of their two Bodies begotten, and the Remainder to one I. in Fee, and afterwards R. aliens one House and one Acre of Land to one Man, and three Acres to another, and two Acres of Land to a third Person, and the Residue of the Manor unto one B. in Fee, except the Rent of thirteen Shillings and four Pence, and afterwards the Husband and Wife die without Issue betwixt them; he in the Remainder shall have such Writ against the Alienee.

Command D. that, &c. be render to I. the Manor of F. with the Appurtenances, except one Messuage, six Acres of Land, and thirteen Shillings and four Pence Rent in the same Manor. And Command G. that, &c. be render to the same I. one Messuage and twenty Acres of Land with the Appurtenances in F. And command T. that, &c. be render to the same I. three Acres of Land, &c. And command L. that, &c. be render to the same I. two Acres of Land with the Appurtenances, &c. which A. gave to R. and I. his Wife, and to the Heirs of the Bodies of them the said R. and I. issuing, so that if they the said R. and I. should die without Heirs of their Bodies, &c. (a) the aforesaid Messuages, six Acres of Land and Manor, except the Messuage, six Acres of Land and Rent aforesaid, should remain to the aforesaid I. and his Heirs, &c.

And by that it appeareth, that a Man shall have a Writ of Formedon in Remainder against several Tenants by divers *Præcipes* in one Writ.

And if a Man lease Lands for Life, the Remainder in Tail, &c. the Remainder over in Fee to another, and the Tenant for Life dieth, and the Tenant in Tail alieneth in Fee, and afterwards the Alienee doth alien two Parts of the Land to one Tenant, and the third Part of the Land to another Tenant, and then the Tenant for Life dieth, and then the Tenant in Tail dieth without Issue: He in the Remainder in Fee shall have a Formedon in the Remainder, in such Form:

Command A. that, &c. be render to B. two Parts of one Messuage with the Appurtenances in N. Command E. that, &c. be render to the same B. the third Part of one Messuage with the Appurtenances in the same Town, which D. gave to C. for the Life of him the said C. so that after the Death of him the said C. the aforesaid two Parts and third Part should remain to the aforesaid F. and to the Heirs of his Body issuing, and if the said F. should die without Heirs of his Body issuing, the aforesaid two Parts and third Part should remain to the aforesaid B. and his Heirs, and which after the Death of the aforesaid C. and F. ought (b)

(a) *Nota bene*; A joint Conclusion to several *Præcipes*, because the Title is in one. 8 R. 2 *Brief* 929.

(b) But if the Remainder had been in Tail to the Heirs of the Body of F. and C. had died Living F. A. need not make Mention thereof. 28 *El.* 3. 26. And by *Passon*, 3 H. 6. 2. if Land be given to A. for Life, Remainder to B. in Tail, Remainder to C. in Fee, and B. dies without Issue living A. and afterwards A. dies, C. shall have a Writ, supposing the Remainder

tailed, or come to him presently on the Death of A. if he will. And *Note*; In this Writ no Mention is of the Death of C. (who had but an Estate for Life) in the *Eo quod*. *Dyer* 349. A Gift was to A. in Tail, the Remainder to B. and C. in Tail, the Issue of B. bring a Formedon in Remainder, *Et que post Mort. A. & B. & C. prefato petenti ut filio & hæredi B. remane e Debet, &c. Eo quod prædicti A. obiit sine, &c.* and held good without shewing the Death of C. in the *Eo quod*.

Writ of Formedon in the Remainder.

to remain to the aforesaid B. by the Form of the Gift aforesaid, because the aforesaid F. died without Heir of his Body, as it is said, and unless, &c.

And by that appeareth how that he shall have one Writ by several *Præcipes* against several Tenants.

[219.] If a Man lease to one twenty Acres of Lands for Life, and dieth, and the Reversion descendeth to his Brother, and he dieth, and the Reversion descendeth to his two Sisters, and they do make Partition of the Lands, and ten Acres are assigned to one Sister to have to her and her Heirs, and the other ten Acres are allotted to the other Sister and her Heirs; and one of the Coparceners grants the Reversion of her Part and ten Acres to a Man and his Wife, and the Heirs of their two Bodies begotten, and afterwards the Tenant for Life dieth, and a Stranger doth enter and abate in the Land; the Husband and the Wife who are in the Remainder, shall have a Writ of Formedon in the Remainder in this Form :

Command R. of N. that, &c. he render to K. and A. his Wife, ten Acres of Land with the Appurtenances in M. which together with other ten Acres of Land with the Appurtenances in the same Town, R. of S. gave to W. for his whole Life, and which M. of B. Sister and one of the Heirs of N. of S. Brother and Heir of the aforesaid R. of S. (to which said M. the Reversion of the aforesaid ten Acres of Land, was assigned for her Purparty falling to her of the aforesaid twenty Acres of Land, by Partition between her and Lucy the Sister, and the other Heir of the aforesaid N. of S. thereof made, after the Death of the said W.) granted to the aforesaid K. and A. and to the Heirs of the Bodies of them the said K. and A. issuing, to have after the Death of the said W. and which after the Death of the same W. ought to remain to the said K. and A. by the Form of the Grant aforesaid, as they say, and unless they will do it, &c. and the said, &c.

And if he who hath the Remainder, or his Heir, be once seised of the A Lands by Force of the Remainder; then he shall never have a Formedon in (a) Remainder for that Land, but a Formedon in Descender, because the Remainder is once executed. And no Tenant shall have a Formedon in Descender, nor in Remainder, where he is once in Possession by Force of the Entail, or by Force of the Remainder; for after that, he hath Possession of the Land by Force of the Tail, or by Force of the Remainder; if he be put out, he shall have an Assise of *Novel Disseisin*, or the Writ of *Quibus*, in the Nature of an Assise, &c.

(b) If a Remainder be given to two or three Heirs, and one dieth, and the B other surviveth and afterwards dieth, his Heir shall have a Formedon in the Remainder, as Heir to him, without mentioning in the Writ that he survived the other Joint-tenant, &c.

Flow. 52. a. And in a Formedon in the Remainder, he ought for to shew the Deed C thereof, if the Demandant do require *Oyer* (c) of the Deed, but in the Count he

(a) In every Writ, if he makes Mention of a Remainder, he ought to suppose the Donee dead without Issue of his Body. 39 Ed. 3. 27.

(b) But he ought to make the Remainder tailed, or come to both of them by his Writ,

and ought to shew the Survivor in his Count. 18 Ed. 3. 28. 38 Ed. 3. 26.

(c) And so, though it be after View, and Aid of the King granted. 18 Ed. 3. 34. But Note; The Tenant shall have no Answer as to the Deed;

he shall not speak of any Deed; but the Tenant ought for to demand *Oyer* thereof, and then the Demandant shall shew the same, and in the Count shall not mention the Deed.

D And if the Remainder be once executed in the Writ of Formedon in the Descender, he shall never mention that Remainder, but the general Writ of Formedon shall serve in that Case, as appeareth by the Rule in the Register (a).

Writ of Formedon in Reverter.

E THE Writ of Formedon in the Reverter lieth where one giveth Lands to a Man in Tail, or in Frank-marriage with his Daughter, and afterwards the Donee, or his Heirs, dieth without Issue of his Body; then the Donor or his Heirs may bring a Writ of Formedon in the Reverter against him who is Tenant of the Lands so given.

And so if one Man giveth Lands unto another in Tail, and the Donor granteth the Reversion in Fee unto another, and then the Donee in Tail dieth without Heir of his Body, the Grantee of the Reversion shall have a Writ of Formedon in the Reverter to recover that Land: But if he grant the Reversion unto another in Tail, and then the Donee dieth without Heir of his Body, then that Grantee of the Reversion shall have a special Writ, as appeareth before, amongst the Writs of Formedon in the Remainder; and for the Heir of the Donor the Form of the Writ is such:

Command A. that, &c. he render to B. one Messuage and twenty Acres of Land with the Appurtenances in G. which C. the Father of the aforesaid B. whose Heir he is, gave to I. and E. his Wife, and to the Heirs of their Bodies issuing, and which after the Death of the aforesaid I. and E. ought to revert to the aforesaid B. by the Form of the Gift aforesaid, because the said I. and E. died without Heir of their Bodies issuing, as he saith, and unless, &c.

F And if Lands be given in Tail, the Remainder to another in Tail, and afterwards the first Tenant in Tail dieth without Issue, and the second Tenant in Tail in the Remainder doth enter into Religion, and is professed; the Donor or his Heirs shall have such a Writ of Formedon in the Reverter.

Which C. the Father of D. whose Heir he is, gave to F. and to the Heirs of his Body issuing, so that if the same F. should die without Heirs of his Body, the aforesaid Messuages, &c. should remain to H. and to the Heirs of his Body issuing, and which after the Death of the said F. and after that the aforesaid H. took upon him the religious Habit, ought to revert to the said D. by the Form of the Gift aforesaid, because the said F. died without Heir of his Body issuing, &c. and unless, &c.

Deed; and therefore shall not say *Ne Dona pas* by the Deed, but generally *Ne Dona pas*, as the Writ supposes; for the Deed is only Evidence to make the Demandant responsible. 10 Ed. 3. 22. 1 Ed. 3. 49, &c. and therefore the Tenant may plead *Non-Tenure* after the Deed delivered. See 2 Ed. 3. 57. A Variance between the Writ and the Deed shall not abate it. 14 H. 6. 1. And

Note; If he demand by Reason of a Use limited on the Feoffment, he need not shew the Deed. Dyer 277.

(a) And Note; Where a Grant is by Fine of Lands in Tail, yet the Issue shall have a *Seire facias*, although the Father was (never) seised. 15 Ed 3 Barr. 255.

Writ of Formedon in Reverter.

And if C. give Lands in Tail to E. and to F. his Wife, and unto the Heirs of their two Bodies begotten, and the said C. hath Issue G. and B. and dieth, and afterwards G. dieth, and B. granteth the Reversion to H. for Life, and afterwards E. dieth, and F. dieth without Issue of their Bodies, &c. B. shall have a Formedon in the Reverter in this Form:

[220.] *Which C. gave to E. and F. his Wife, and to the Heirs of the Bodies, &c. issuing, and which G. the Son and Heir of the said C. Brother of the said B. whose Heir he is, after the Death of the said E. granted to H. for his whole Life, to have after the Death of the said F. and which after the Death of the aforesaid F. and H. ought to revert to the said B. by Form of the Gift and Grant aforesaid, because the said E. and F. died without Heirs of their Bodies issuing, &c.*

And it seemeth in that Case, that if H. had survived F. and had entred into the Land, and had been seised of the Land for Term of his Life, and then had died, that then the said B. shall not have a Formedon in the Reverter, but a Writ of Entry *Ad terminum qui præterit*. But if H. have not entred into the Land after the Death of F. then the said B. shall have the Writ of Formedon in the Reverter. But if H. have entred into the Land after the Death of F. and had aliened the Land in Fee, then B. ought to have had a Writ of Entry *in consimili Casu* during the Life of H. and after the Death of H. a Writ of Entry *Ad communem Legem*.

And if F. lease Lands unto P. for Term of Life, and hath Issue a Son and a Daughter, and dieth, and the Son granteth the Reversion to I. and to the Heirs of his Body begotten, and afterwards the Tenant for Term of Life dieth, and the Tenant in Tail dieth without Issue, &c. and then the Son who was Donor dieth, the Daughter shall have a Formedon in the Reverter in this Form:

Which F. gave to P. for his whole Life, and which T. the Son and Heir of the said F. Brother of the said B. whose Heir he is, granted to I. to have after the Death of the said P. to him the same I. and to the Heirs of his Body issuing, and which after the Death of the said P. and I. ought to revert to the said B. by the Form of the Gift and Grant aforesaid, because the said I. died without Heir of his Body issuing, as he saith, &c.

And if Lands be given in Tail, and the Tenant in Tail hath Issue two Daughters, and afterwards one of the Daughters hath Issue a Daughter B. and the other Daughter hath Issue another Daughter C. and afterwards B. hath Issue I. and then all the Daughters die, and then the said I. dieth without Issue of his Body, the Donor or his Heir shall have such Writ:

And which after the Death of the said E. and F. and of M. and A. the Daughters and Heirs of the same E. and F. and of I. the Son of the said M. and Heir of the same M. and A. ought to revert to the said I. of B. &c. because the aforesaid I. Son of the said M. died without Heir of his Body issuing, &c.

In a Formedon in the Reverter in his Count he ought to lay the Esplees in the Donor, and in the Donee.

N.B. 150.

In a Formedon in the Reverter he ought to mention the eldest Brother who survived his Father, &c. because he held the Estate, although that he was not seised of the Land; as if the Donor hath Issue two Daughters and dieth, and the eldest Son dieth before he entred into the Land. In a Formedon in the Reverter brought by the youngest Son, he ought to mention the eldest Son, who

who was his Brother, because he was once Heir to the Donee; but if the eldest Son die in the Life-time of the Father, then the youngest Son in the Writ (*a*) brought by him shall not mention him as Heir to the Father, because he was never Heir *in fact* to the Father, but in a Writ of Right, which is called *Præcipe in Capite*, brought by the youngest Son, as Heir to his Father, although the eldest Son be dead in the Life of the Father, yet in his Count he ought to make mention of the eldest Son, because by Possibility he might have held the Estate, and have been Heir to his Father.

E And if a Man give Lands in Tail, and the Tenant in Tail hath Issue, and dieth, and the Issue dieth without Heir of his (*b*) Body before he entreteth into the Land, the Donor may bring a Formedon in the Reverter, supposing that the Donee died without Issue, &c. and that Writ was awarded good, *M. 18 Ed. 2.* because the Issue was not living at the Time of the Purchase of the Writ; and he cannot have a Formedon in the Reverter of the Seisin of the Issue, because the Issue died before he had any Seisin of the Land.

Writ of Ejection firmæ.

F THE Writ of *Ejectione firmæ* lieth, where a Man doth (*c*) lease Lands for Years, &c. and afterwards the Lessor doth eject him, or a Stranger doth eject him of his Term, the Lessee shall have a Writ of *Ejectione firmæ*; and the Form of the Writ is such: Vi. 1 & 2 Ma.
Dyer 117.
Ingrave's Case.

G *The King to the Sheriff, &c. If A. shall make you secure, &c. then put, &c. B. that he be before our Justices, &c. to shew wherefore with Force and Arms he entered into the Manor of I. which T. demised to the said A. for a Term which is not yet passed, and the Goods and Chattels of him the said A. to the Value of, &c. found in the same Manor, took and carried away and ejected him the said A. from his Farm aforesaid, and other Wrongs to him did, to the great Damage of, &c.* Dyer 228.

And there is another Form of Writ, thus:

(*a*) See 2 *Ed. 3.* 25. *N. Br.* 150. 18 *Ed. 2.* Formedon 59. The Plaintiff counts in this Writ, that he to whom the Tenements were given— And held that the Right came to the Donor, although the Donor was dead, living the Donee in Tail. But in a *Contra formam Collationis* it is otherwise, *F. Contra form' Coll'*, 7 *Ed. 3.* See 3 *Ed. 3.* Formedon 43.

(*b*) See 7 *Ed. 3.* 34. 18 *Ed. 3.* 28. *Eo quod* the Issue died without Issue; and so the Writ ought to be *per Shard*, when the Issue was seized. 22 *H. 6.* 36. 18 *Ed. 3.* 42. See a Formedon in Reverter awarded good, supposing that the Donee died without Issue, where he had Issue, who survived and was seized; *contr.* in the same Case an *a Scire facias* by him in Remainder on an

Estate Tail, 25 *Ed. 3.* 49. and *per Skip.* If the Issue was seized after the Death of the Donee, he ought to suppose that the Issue died without Issue; *sed alii contr.* 26 *Ed. 3.* 75. See a Supposal, *per Mort.* of the Donee, *Eo quod* the Donee died without Issue. *Dyer* 216.

(*c*) Note; If he be not in actual Possession at the Time of the Ejectment, this Writ does not lie. *Kelw.* 130. This Writ lies of a Gorfe. *Dyer* 228. 11 *Ed. 10.* *Ant.* 198. where it lies, *vide ibid.* and 21 *Ed. 4.* 10 and 30. 1 *H. 5.* 3. 12 *H. 4.* 10. *Dyer* 89.

Also this Writ lies against the Ejector, though he has aliened. 12 *H. 4.* 10. See *Dyer* 89. *Bona & Catalla* omitted.

6 R. 2. Fitz. Ejectione firmæ cont. *To shew wherefore with Force and Arms into the Manor of B. which I. demised to the said A. for the Term of seven Years, he entred within that Term, and occupied it for a long Time, and hindred him the said A. whereby he was not able to perceive the Issues of the Manor aforesaid according to the Demise aforesaid, and took, &c. the Goods, &c.*

Plow. 222. 1 Salk. 5. Co. Lit. 128. b. (a) And in that Writ he shall recover his Term again, if the Term be not H. ended, and the Process is Attachment and Distress, and Process of Utlagary. And Anno 14 H. 7. in *Ejectione firmæ* brought against a Stranger, the Plaintiff had Judgment for to recover his Term, and thereupon the Defendant brought a Writ of Error, and the Judgment was affirmed, and Execution awarded for the Plaintiff.

And 17 H. 8. such Judgment was given in the Common Pleas, that he I. should recover his Term and his Damages.

Ant. 198. [221.] If a Man lease Lands for Years, and afterwards suffer a feigned Recovery against him by a Writ of Entry in the *Post*, or other Writ, if he who recovereth entreth, the Termor shall have an *Ejectione firmæ* against him by Force of the Statute of 21 H. 8. cap. 15. because the Statute giveth him Power to retain, hold and enjoy his Term. And by that it appeareth, that he who recovereth doth Wrong unto him, if he oust him of his Term; but before the said Statute the Lessee could not have such Writ, because he who recovered came in by Course of Law.

And if a Man lease Lands for Years, and afterwards granteth the Reversion A in Fee, and the Lessee attorneth; now if the Grantee of the Reversion do put out the Termor, he shall have an *Ejectione firmæ* against him. And so if the Reversion do escheat, and the Lord by Escheat eject the Termor, he shall B have an *Ejectione firmæ* against him.

And if he in the Reversion be a Villain, and the Lord claim the Reversion, C and afterwards eject the Termor, he shall have an *Ejectione firmæ* against him.

(a) And therefore he shall not have this Writ after a Re entry, by *Huffy*. 21 Ed. 4. 11. So Entry of the Plaintiff pending the Writ abates it. *Dyer* 226. Yet *quare*, 13 Eliz. 13. although the Plaintiff enters pending the Writ, he shall recover his Damages; for it is but an Action of Trespass in its Nature. But the Entry here seemed to be after the Term ended; and *Dyer* said, that before 14 H. 7. the Judgment was only, that the Plaintiff should recover his Term. *Dyer* 13.

Writ of Aiel or Befaiel.

D **T**HE Writ of Aiel or Befaiel lieth, where the Grandfather or Great Grandfather was seised in his Demesne as of Fee of any Lands or Tenements of Fee-simple the Day of his Death, and dieth, and a Stranger doth abate or entreth the same Day upon him, and deforceth the Heir, the Heir shall have that Writ of Aiel or Befaiel, as the Case is, and it behoveth not that the Grandfather die seised; or if he be seised the Day that he died, it sufficeth to maintain this Action; and the Form of the Writ is such:

Note, That in this Writ a Man cannot make Title higher than his Befaiel, or the Brother of his Befaiel,
3 Ed. 3. Item no Estoppel to

nota Fitz. Aiel 6. 40 Ed. 3. 38. It was found by Assise, that the Ancestor did not die seised, yet have Cofinage; for if he were seised the Day in which he died, it sufficeth.

E *The King to the Sberiff, &c. Command A. that justly, &c. he render to B. one Messuage with the Appurtenances in E. of which W. the Grandfather of the said B. or Grandmother of the said B. or Great Grandfather, or Great Grandmother of the said B. whose Heir he is, was seised in his (or her) Demesne as of Fee, upon the Day in which he died, as he saith, and unless he will do it, and the aforesaid B. shall make you secure, &c. then summon, &c. the aforesaid A. &c.*

In Aiel the Defendant said, that the Aiel had Issue W. eldest Son, who survived the Aiel, and committed
6 Ed. 3. Fitz. Aiel.

Felony, and was abjured, and afterwards taken, and in Eyre adjudged a Felon; and good Plea.

F And the Procefs in that Writ is Summons and Grand Cape before Appearance; and after Appearance, if the Tenant make Default, a Petit Cape shall be awarded.

G And although that the Ancestor go in Pilgrimage beyond the Sea, and there dieth, yet the Writ of Aiel shall be general, as is aforesaid. *Ant. 196.*

13 Ed. 3. Aiel 2.

And so if the Grandfather enter into Religion, and is professed, the Heir shall have a Writ of Aiel, if the Stranger do abate, and the Writ shall be general, and shall not speak of his Entry into Religion, or of his Profession, &c.

21 Ed. 3. 10. Br. Cofinage.

H And the Aunt and the Niece shall join in a Writ of Aiel of the Seisin of their Grandfather, by Equity of the Statute. And the Statute shall serve for those dying seised before the Statute, as for those dying seised since the Statute.

And two Coparceners brought a Writ of Aiel, and by their Count they did suppose the Ancestor to be Great Grandfather to the one, Trefaiel to the other, and yet it was adjudged good. And the Writ in the Register is such:

The King to the Sberiff, &c. Command A. that justly, &c. he render to B. and C. one Mill, &c. of which D. the Grandfather of the said B. and Great Grandfather of the said B. whose Heirs they are, was seised, &c.

6. In Befaiel, the Release of the Aiel Warranty is good Plea, 12 Ed. 3. Joinder in Action

Writ of Cofinage (a).

22 Ed. 3. 13. **T**HE Writ of Cofinage lieth, where the Trefaiel was seised in his Demefne I
cont. as of Fee, the Day he died, of any (b) Lands or Tenements, and dieth, and a Stranger doth enter and abate, then his Heir shall have his Writ of Cofinage; and the Form of the Writ is such:

The King to the Sberiff, &c. Command A. that justly, &c. he render to B. one K Messuage with the Appurtenances in N. of which (c) W. the Cousin of the said B. whose Heir he is, was seised in his Demefne as of Fee upon the Day wherein he died, as he saith, and unless, &c.

And a Man shall have a Writ of Cofinage of the Seifin of the Brother of L. the Trefaiel. 6 Ed. 2. Cofin. 10, 11.

22 Ed. 3. **A**nd the Heir of the Lord who was his Trefaiel may have a Writ of Co-M
Brief 308. finage of the Rent of the Seigniori against the Tenant, if he desorce him of
It is admitted the Rent, and may count of the Seifin of his Trefaiel; or if he will, he may
that Trefaiel is Cousin. have a Writ of Customs and Services against the Tenant at his Election.

46 Ed. 3. 15. **A**nd if a Man have a Writ of Aiel, he shall not bring a Writ of Cofinage, N
12 H. 7. 4. and if he do, the Tenant may abate the Writ by pleading the Seifin of the
4 Ed. 3. Aiel 4. Great Grandfather; and also a Man shall not have a Writ of Cofinage of the
10 Ed. 3. 45. Seifin of his Great Grandfather, but shall be put to his Writ of Befaiel, &c.

12 H. 4. **N**or a Man shall not have a Writ of Cofinage of the Death of his Uncle,
Cofin. 2. because he may have an Assise of Mortdauncestor of his Seifin.

N. Br. 118. **A**nd Cofinage doth not lie between Privies in Blood, no more than an Assise O
con. of Mortdauncestor, but shall be put to their *Nuper obiit*.

44 Ed. 3. 13. **A**nd if a Trefaiel goeth beyond Sea and entreth into Religion, and be pro-
2 H. 5. 1. fessed; yet the Writ of Cofinage shall be general, as the Writ of Aiel shall be.

21 H. 3. **A**nd the Procefs is Summons, Grand Cape and Petit Cape.

14 Ed. 3. Cofin. 6.
Supra G.

(a) In Cofinage a Man makes but an oblique Right, 22 Ed. 3. 16. 22 Ed. 3. 13. And Note; Descent only from the Brother of the Great In some Writs, when it is past the Great Grand- Grandfather, which is four Degrees; but where father he shall be named Cousin; but in a Count the Descent is lineal, it is two Degrees. 30 Ed. 1. so named, abates it. 15 Ed. 3. Brief 323.

(b) See *contr.* that he is put to his Writ of Cofinage 15. 32 Ed. 1. 34. (c) And he shall shew how Cousin in his Count. 12 H. 4. 1.

Writ of Ad quod Damnum.

THE Writ of *Ad quod Damnum* lieth, where a Man will give Lands or Tenements in Mortmain, as to a religious House, or to a Body Politick in Fee-simple, then he ought for to have the King's Licence and the Licence of the chief Lords to make such Gift or Grant, and before such Licence be granted; and the Course is to sue unto the King to have a Licence to sue that Writ out of the Chancery, directed unto the Escheator to inquire what Damage it would be to the King, or unto other Persons, if the King do grant such Licence: And upon the Return of that Writ certified in the Chancery, the King ought to give Leave, that he may alien or give in (a) Mortmain; and that Inquisition ought to be certified into the Chancery under the Seals of Escheator and of the Jurors, by whom the Inquisition was found; and the Form of the Writ is such:

A *The King to his beloved I. of K. his Escheator in the County of L. greeting: We command you, that by the Oath of honest and lawful Men of your Bailiwick, or of your County, by whom the Truth of the Matter may be better known, you diligently inquire if it may be to the Damage or to the Prejudice of us or of others, or not, if we grant to B. that he may give and assign one Messuage, two Acres of Land and one Acre of Meadow with the Appurtenances in W. to a certain Chaplain to celebrate Divine Service for the Soul of him the said B. and the Souls of his Father, Mother and Ancestors, and of all the faithful Deceased, in the Chapel of the blessed Mary of W. or in the Parochial Church of the blessed Mary of S. every Day; to have and to hold to the said Chaplain and his Successors celebrating Divine Service in the Church aforesaid or in the said Chapel for the Souls aforesaid, every Day, as is before said; and if it be to the Damage or Prejudice of us or of others, then to what Damage and what Prejudice of us, and to what Damage and what Prejudice of others, and of whom, and how and in what Manner, and of whom or what Persons the said Messuage, Land and Meadow are holden, and by what Service, and how and in what Manner, and how much they are worth by the Year in all Issues, according to the true Value of the same, and who and how many Mesnes there are between us and the aforesaid B. of the Messuage, Land and Meadow aforesaid, and what Lands and what Tenements remain to him the said B. besides the Donation and Assignment aforesaid, and where, and of whom or of what Persons they are holden, and by what Service, and how and in what Manner, and how much they are worth by the Year in all Issues, and if the Lands and Tenements remaining to the said B. besides the Donation and Assignment aforesaid, be sufficient for the Customs and Services owing to be done, as well for the Messuage, Land and Meadow so given, as for the other Lands and Tenements retained to himself, and all and singular other Charges which he sustains, and hath been accustomed to sustain, as in Suits, Views of Frank-pledge, Aids, Tallages, Watches,* [222.]

(a) Entry for Mortmain. Note; Disseisor and of a Seignior, shall have only one Year. *Keto.*
Disseisee, Tenant for Life, and he in Remainder 171. *quere.*

Writ of Ad quod Damnum.

Fines, Ransoms, Amerciaments, Contributions, and other Charges whatsoever emerging to be sustained; and that the same B. may be put in Assises, Juries and other Recognizances whatsoever, as he might be put before the Gift and Assignment aforesaid, so that the Country, by the Gift and Assignment aforesaid, in Default of him the said B. may not be charged or aggrieved more than usual, and without Delay send the Inquisition thereupon made distinctly and openly to us in our Chancery, under your Seal and the Seals of those by whom it shall be made, and this Writ. Witnesses, &c.

Or thus: *That the Heirs of him the said B. may be put in Assises, Juries and other Recognizances whatsoever, as his Ancestors have been accustomed to be put before the Gift and Assignment aforesaid, so that the Country, &c.*

By which it appeareth, that it is Damage to the Country, that a Freeholder who hath sufficient Lands to pass upon Assises and Juries, should alien his Lands in Mortmain, by which Alienation his Heirs should not have sufficient Lands after the Death of the Father to be sworn in Assises and Juries.

And by the Rule of the Register, if a Chaplain or a Woman will give their Lands or Tenements in Mortmain; yet in the Writ of *Ad quod Damnum* shall be that Clause, *And that they the said, &c. may be put in Assises, Juries and other Recognizances whatsoever*, by which it appeareth, they ought to have sufficient Lands, besides Lands to descend to their Heirs.

And if a Chaplain and Layman will alien in Mortmain jointly by Licence, C then the Writ of *Ad quod Damnum* shall be in this Form:

And that the said A. and B. and the Heirs of the said B. the Chaplain, may be put in Assises, Juries, &c. as the said A. and the Ancestors of him the said B. the Chaplain, have been accustomed to be put before the Gift, &c. so that the Country, &c. in Default of him the said A. and of the Heirs of the aforesaid B. may not be charged, &c. more than usual, &c.

And if one Abbot will give Lands or Tenements in Mortmain to another D Abbot or Prior or Body Corporate, yet he ought to have the (a) King's Licence so to do, because of the Words of the Statute of Mortmain: *So that the Lands and Tenements may not by any means come into Mortmain.* And there he ought for to sue a Writ of *Ad quod Damnum* to inquire as aforesaid: But in the Writ shall be this Clause, *And that he the said Abbot, &c. may be put in Assises and Juries, &c.* nor that Clause, *Ita quod patria, &c.* shall not be put in that Writ of *Ad quod Damnum*. But now the common Experience is, that they will not sue the Writ of *Ad quod Damnum* when they purchase Leave to alien in Mortmain; but the Use is, to have these Words in the End of the King's Patent of Licence; *And this, without any Writ of Ad quod Damnum, or our other Writs and Inquests or Commands thereupon, to have and prosecute.* But it seemeth those Patents are dubious whether they be good or no; if it be evidently proved, that such Patents are unto the Damage of others who are the King's Tenants, and by which the King's Tenants ought to have Wardships or Escheats, &c. and by which the King loseth the Wardship of his Tenants, or that the King loseth any Advantage which he might have, if

(a) And therefore if the Tenant incroaches the Abbot himself, the Lord may enter. *Kelw.* 111.

such Patents were not granted. And therefore I conceive that the best Course is, to sue forth such Writs of *Ad quod Damnum* to inquire to what Damage such Licences in Mortmain shall be to the King or others, so that the King be not deceived in his Grant. And see a good Cause for the same in the Title of *Grants* in the Abridgment. *H. 16 Ed. 3. pl. 53. Bro. 651.* where the Charter was repealed. [223.]

- A And there is another Writ of *Ad quod Damnum*, if it be to the Damage, &c. If the King grant to *B.* that he may give five Houses, &c. to *C.* Guardian of the Chapel of our Lady Saint *Mary*, and to his Successors, Guardians and Chaplains of the foresaid Chapel, for the Maintenance of the said Guardian and two Chaplains to do Divine Service in the said Chapel and in the Church of *P.* &c. in the Honour, &c. and for the Souls, &c.
- B And if the King will give Licence to one to grant a Rent unto an Abbot and his Successors, yet he ought for to sue forth a Writ of *Ad quod Damnum*, if he have not these Words in the Patent; and this without any Writ of *Ad quod Damnum*, &c. And the Form of the Writ is such: ^{3 Ed. 4. 14.} ^{9 H. 7. 9.} ^{4 H. 6. 9.}

If we grant to him the said A. that he may give and assign one hundred Marks Rent with the Appurtenances in N. to our beloved in Christ the Abbot and Convent of N. and to the Prior and Monks in the Priory of Saint James, Bristol, (which is a Cell of the said Abby for those abiding there) to find two Chaplains, &c. in the Church of the said Priory, to hold to the same Abbot and Convent and Priory, and Monks dwelling in the said Priory, and to their Successors, to find two Chaplains, &c. in the Church of the said Priory, as is before said, to celebrate Divine Service every Day for ever, or not? And if it be to the Damage, &c. to what Damage, &c. and of whom or what Persons the said Rent is holden, and by what Services, and how and in what Manner, and who and how many Mesnes are there, &c. (as in the first Writ).

And it is not said in the Writ what the Value is yearly, because Rent ought not to be extended.

- C And if a Man sue to the King for a Licence to give an Advowson to two Chaplains and to their Successors to hold to their proper Use, and that they may hold the same to them and their Successors, appropriate for ever, to say Divine Service, &c. he shall have a Writ of *Ad quod Damnum* to inquire what Damage such Grant would be to the King or others, and that Writ appeareth in the Register. And in the Writ of *Ad quod Damnum* the Substance of the Licence to alien in Mortmain ought to be expressed.
- D
- E And if a Man will exchange Lands, Tenements or Rents with another Abbot or Body Corporate, upon the Licence (a) granted, he ought to sue forth a Writ of *Ad quod damnum*; and in the Writ both the Lands which are given, and the Lands which are taken in Exchange, ought to be mentioned, and to inquire of them, as afore is said.
- F There is another Manner of Form of *Ad quod Damnum*, where the King granteth a Licence unto an Abbot or a Prior to purchase twenty Pounds Land, and afterwards one Man will give Lands to the said Abbot of the

(a) See 19 *Ed. 3. Mortm. 8.* Both of them were Men of Religion.

Writ of Ad quod Damnum.

Value of five Pounds, another will give him Lands of the Value of forty Shillings, and another Man Lands of the Value of twenty Shillings; the Form of the Writ of *Ad quod Damnum* shall be such :

The King to his Escheator, &c. We command you, &c. if it may be to the Damage of, &c. if we grant to A. that he may give and assign one Messuage and forty Acres of Land with the Appurtenances in the same Town, and if we grant to E. of F. that he may give and assign thirty Acres of Land in the same Town, to our beloved in Christ, &c. to hold to them and their Successors in Part of Satisfaction of twenty Pounds of Lands and Rents by the Year, which Lord Edward lately King of England, our Grandfather, granted Licence to purchase by his Letters Patent to them the said Abbot and Convent, as well of their own Fee as of other, except of Lands and Tenements which were holden of him our said Grandfather in Chief: And also to I. of N. that he may give and assign one Messuage with the Appurtenances in the same Town to the same Abbot and Convent, to have and to hold to them and their Successors for ever, in Exchange for one Messuage in the same Town to be given and granted to him the said I. of N. by the said Abbot and Convent, to have and to hold to him the said I. of N. and his Heirs, in Exchange aforesaid (as before is said) for ever, or not? And if it may be to the Damage, &c. (as before).

2 Il. 7. 6.

Vide 16 Eliz.
Plow. Com.
457. D.
1 Inst. 52. b.

And by that Writ it appeareth, that he may have one Writ for divers Purchases to be made; and also that a Licence made unto an Abbot, in the Time of one King, is good to purchase Land in the Time of another King.

There is another Writ of *Ad quod Damnum* where the King granteth to an Abbot or to a Bishop Licence for to purchase an Advowson, and to appropriate the same to him and his Successors for ever.

And another Writ where the King granteth unto an Abbot or Bishop Licence for to appropriate an Advowson whereof they are seised in Fee in their own Right.

14 Ed. 3.

Quar. imp. 13.

By which it appeareth, that a Bishop or an Abbot could not have appropriated an Advowson, whereof they were seised in Fee in their own Right, without the King's Licence; and if they did, it was forfeited for Mortmain.

21 Ed. 3. 5.

38 Assise 52.

Br. Mortm. 20.
it is no Mortmain.

21 Ed. 3. 18.

Br. Mortm. 16

& 31. it is no

Mortmain,

because the

Rent is ex-

tinct.

And if an Abbot holdeth of another Man by a certain Rent-Service, the Lord (a) cannot release unto the Abbot that Rent without the King's Licence; and if he do, it is Mortmain, and the King shall have the Rent; and therefore is the Writ of *Ad quod Damnum* ordained, that where the Lord hath Licence to release unto the Abbot that Rent, to inquire to whose Damage the same shall be, &c. as it shall be of Lands, &c.

There is another Form of *Ad quod Damnum* where the King giveth a Licence to alien Lands and an Advowson, which are holden of him *in Capite*, unto an Abbot, and that he do appropriate them. And another Form of Writ where the King granteth a Licence to one to alien certain Lands, and a Reversion of other Lands, to a Chaplain in Mortmain.

[224.]

(a) But if he releases the Rent, saving to himself the Services; or if he release to hold of him in Frankalmoigne, it is not Mortmain.

10 Ed. 3. 5. 21 Ed. 3. 18. Quar. 10 Ed. 3. Mortm. 17. Bro. Mortm. 31.

- B** And if the Villain of an Abbot or Prior do (a) purchase Lands or Tenements in Fee, the Abbot or Prior cannot enter into them without the King's Licence; and if he do, it is Mortmain. And it seemeth that the Law is such, because there is a Writ of *Ad quod Damnum* in the Register to inquire to whose Damage the same is; and if the King granted such Licence unto an Abbot or Prior, that they may enter into such Lands or Tenements which their Villains have purchased.
- C** And see the Statute *De Religiosis* how that Case shall be taken to be within the Words of the Statute, or by Equity of the Statute.
And it appeareth by the several Forms of Writs of *Ad quod Damnum* which are in the Register, that the Writ ought to be made according to the Letters Patent of Licence, because he ought to rehearse the Effect of the Letters Patent therein; and therefore the Forms of the Writs of *Ad quod Damnum* do
- D** vary as the Letters Patent themselves do vary. And it appeareth by the Register, that if a Man do purchase Letters Patent of Licence to give Lands unto an Abbot in Exchange for a Rent, which the Abbot releaseth to him, &c. that he shall have a Writ of *Ad quod Damnum* thereupon. 16 Ed. 3. Excha. 2. Perk. 2.
- E** And if a Man do purchase a Licence to found a House with Lands, or to make a Prebendary, and to give Lands to the same, &c. that he ought to have a Writ of *Ad quod Damnum* upon the same.
- F** And if a Man doth devise Lands or Rents to his Executors and to their Heirs, to dispose according to his Will, and afterwards he maketh his Will, that they give the same in Mortmain; they ought to have the King's Licence to make the Grant, and a Writ of *Ad quod Damnum* upon the same, as appeareth by the Register.
- G** If an Abbot or a Dean and Chapter have a Rent in Fee issuing out of Lands, and the Tenant of the Land will grant by his Deed, that they and their Successors shall distrain for that Rent in other Lands, it appeareth by the Register, that he ought to have the King's Licence to make such Grant: And a Writ of *Ad quod Damnum* shall be to inquire what Damage or Prejudice the same shall be to the King or others, &c. and yet it is hard to prove, how that shall be taken to be within the Words of the Statute of Mortmain, because such Grant is a good Grant of a Rent in Fee, although that there were not such Rent before to the Abbey or Dean and Chapter. It seemeth, that the Grant made without Licence (b) shall be as a new Grant in Law. *Tamen quere.* 17 Ed. 3. 57.
29 Ed. 3. 33.
21 Ed. 3. 24.
cont.
7 Ed. 3. 57.
cont.
9 H. 6. 9.
Litt. 48.
41 Ed. 3. 15.
9 H. 6. 9.
1 Aff. 10.
Br. Aff. 105.
- H** There is another Manner of *Ad quod Damnum*, and that is, where the King's Tenant will alien his Lands which he holdeth of the King to another in Fee, or in Tail, or for Life, then by the Course of Law he ought to have the King's Licence by his Letters Patent so to do, and before the Alienation be made, the King ought to be certified by a Writ of *Ad quod Damnum* what Damage or Prejudice that Alienation shall work to the King: But at this Day that Writ is not used to be granted, but only the Licence to alien without regard to any Writ of *Ad quod Damnum* to inquire thereof. But yet such 32 H. 6. 27.
cont. 41 Aff. 3.
cont. 10 Aff. 4.
cont.

(a) But it is otherwise, where the Villain has the Lands by Descent. 48 Ed. 3. 29. 41 Ed. 3. 9. 26. 19 H. 6. 57. 13 Ed. 3. Brief 262.

(b) See this same Case in Question, 9 H. 6.

Writ of Ad quod Damnum.

Licence must not be allowed of by the Justices when the same is shewed, without bringing a Writ out of the Chancery unto the Justices, which is called *Quod permittat, &c.* for which see *M. 33 H. 6.* in Title *Fines.* And the Form of the Writ of *Ad quod Damnum* is such:

The King to his Escheator, &c. We command you, &c. diligently inquire if it may be to the Damage or Prejudice of, &c. if we grant to I. that he may enfeof P. of his Manor of N. with the Appurtenances, which are holden of us in Chief, as it is said, to have and to hold to him and his Heirs, of us and our Heirs, by the Services thereof due and accustomed, for ever, or not? And if it may be to the Damage and Prejudice of us, or of others, &c. and what Prejudice of others, and of whom, and how, and in what Manner, and whether the said Manor be holden of us in Chief, (as before is said) or of any other; and if of us, then by what Service, how and in what Manner, and how much the said Manor is worth by the Year in all Issues, according to the true Value of the same; and if any Lands and Tenements remain to him the said I. besides the Manor aforesaid, then what Lands and Tenements, and where and of whom, or of what Persons they are holden, to wit, whether of us, or of any other; and if of us, then by what Service, and how and in what Manner; and if of any other, then of whom, or of what Persons, and by what Service, and how and in what Manner, and how much they are worth by the Year in all Issues. And the Inquisition thereof, &c. distinctly and openly, &c.

And if the King will grant a Licence unto his Tenant who holdeth of him *in Capite* to alien unto another in Fee, and to take back an Estate unto him and his Wife, and unto the Heirs of their two Bodies begotten, from the same Alienee; and for Default of such Issue, the Remainder unto another in Fee-tail; and for Default of such Issue, the Remainder to the right Heirs of the first Donee; he in that Case shall have a Writ of *Ad quod Damnum, &c.* to enquire, &c. and yet such Writs are not used to be granted upon such Licence.

[225.]

There is another Writ in the Register, that if the King's Tenant doth alien his Lands, of which a Woman holdeth Part in Dower for Term of her Life, and another holdeth other Parcel thereof for Term of her Life, and he himself holdeth the Residue in Fee: Now he shall have a Writ of *Ad quod Damnum*, rehearsing all the Estates and Licences.

If the King granteth Lands to one for Life, and afterwards granteth the Reversion to *D.* in Fee, and then *D.* dieth, and his Heir granteth the Reversion to *R.* and *W.* in Fee, and afterwards *R.* and *W.* grant the Reversion to *M.* for Life, and all those Grants are made without Licence, and afterwards *M.* sueth to have a Licence, that she may enter after the Death of the first Tenant for Life; she shall first have a Writ of *Ad quod Damnum*, to enquire, &c. and the Writ shall be such: B

The King to his beloved Clerk F. of C. his Escheator in the County of C. greeting: M. hath besought us, That, whercas A. heretofore granted, that one Messuage with the Appurtenances in N. (which is holden of us in Chief (as it is said,) and which I. and B. his Wife, hold for the Life of her the said B. of the Demise of the said A. which also after the Death of her the said B. ought to revert to the aforesaid A. and his Heirs) after the Death of the said B. should remain to D. and his Heirs; and F. the Son and Heir of him the said D. further granted, that the Messuage aforesaid with the Appurtenances, (which ought to revert to him the said

said F. and his Heirs, by reason of the Grant and Attornment to him in this Behalf made) after the Death of the same B. should remain to R. and W. and their Heirs; and they the said R. and W. granted, that the Messuage aforesaid with the Appurtenances, (which ought to revert to them the said R. and W. and their Heirs, after the Death of the said B. by reason of the Grant and Attornment aforesaid to them made of the Premises) should remain after the Death of the said B. to the said M. for her whole Life, so that after the Death of the said M. that Messuage with the Appurtenances, after the Death of the said B. should remain to K. and the Heirs of him the said K. our Licence hereupon not being obtained: We would grant to her the said M. that she may enter the said Messuage with the Appurtenances, after the Death of the said B. and hold the same for her whole Life, of us and our Heirs, by the Services thereof due and accustomed, so that after the Death of her the said M. the said Messuage with the Appurtenances, may remain to the said K. and the Heirs of the said K. to be holden of us and our Heirs, by the Service aforesaid, for ever: We being willing to be certified by you, whether we may (in this Behalf) assent to the Prayer aforesaid, without Damage or Prejudice of ourselves, or of any other Person whatsoever, command you, that by the Oath of, &c. (as above, until) or of others, if we grant to the said M. that she may enter and hold the Messuage aforesaid, with the Appurtenances, after the Death of her the said B. in Form aforesaid, or not? And if, &c. (as before).

And by that it appeareth that an *Ad quod Damnum* shall be awarded, where the King granteth a Licence unto one for to enter into the Land, which Land the King might grant for a Fine for Alienation. And also it doth appear by that Writ, that a Clerk and a Chaplain was then Escheator of the County.

C And if B. the King's Tenant doth alien to A. in Fee, and afterwards A. giveth back the same Lands to the same B. and C. his Wife in Tail, and then A. dieth, and then B. dieth without Heir of his Body, and afterwards D. Brother and Heir of A. doth release all his Right in the Land unto C. who was the Wife of B. in Fee without the King's Licence, if the King will pardon that Trespass for making of that Release, a Writ of *Ad quod Damnum* shall be awarded to enquire what Damage or Prejudice the same shall be to the King, and the Writ appeareth in the Register; but such Writs are not used to be sued forth at this Day, but such Pardons are allowed for the Tertenant, without any such Writ of *Ad quod Damnum*, &c. But yet if the King be damnified by any such Pardon, in any Point whereof he had Notice; whether the same shall make void the Pardon or not, *Quære*.

D And if the King will grant to one to make a Ditch of a certain Length in his own Land, next to the King's Pond adjoining, to draw the Water from the Pool by the Ditch to his Mill, rendring yearly to the King and his Heirs a certain Rent, a Writ of *Ad quod Damnum* shall be awarded for to enquire what Damage the same shall be to the King, and the Writ shall recite the Grant, and the Rent reserved.

E And if there be an ancient Trench or Ditch coming from the Sea, by which Boats and Vessels use to pass to the Town, if the same be stopped in any Part by Outragiousness of the Sea, and a Man will sue to the King to make a new Trench, and to stop the ancient Trench, &c. they ought first to sue a Writ of *Ad quod Damnum*, to inquire what Damage it will be to the King or others.

Writ of Ad quod Damnum.

And if the King will grant to any City the Assise of Bread and Beer, and the Keeping of Weights and Measures, an *Ad quod Damnum* shall be first awarded, and when the same is certified, &c. then to make the Grant. F

And it appeareth by the Register, that upon every Grant to be made by the King, of Lands, Tenements, Liberties, or other Things, that a Writ of *Ad quod Damnum* shall be first directed to the Escheator, to inquire what Damage it will be to (a) the King or others; and in those Writs in the Register, appear notable Forms of Grants made in divers Manners; for in every Writ the Manner of the King's Grant, and the Effect thereof is specified and recited in the Writ of *Ad quod Damnum*. G

And if a Man will give Lands unto the King in Fee, unto the Intent that the King shall give them to a religious House, yet a Writ of *Ad quod Damnum* shall be directed to the Escheator to inquire what Damage that shall be to the King, or others, if the King should accept thereof, and give the same to the religious House. A

And if the King seizeth Lands aliened in Mortmain, and afterwards will give them again to the Abbot, &c. in Fee, yet a Writ of *Ad quod Damnum* shall be awarded, to inquire to whose Damage it shall be, &c. B

And so if an Abbot purchaseth Lands without Licence, and afterwards the King will pardon him for the Purchase, and grant that he may retain and keep the Lands, yet an *Ad quod Damnum* shall issue to inquire, &c.

And if the King's Tenant doth alien without Licence, for which the King seizeth the Lands: If the King will restore the Lands, and pardon the Trespas, yet the Writ of *Ad quod Damnum* shall issue forth to inquire what Damage it is to the King, if he make such Grant; but that is not in use at this Day; but to pay a Fine, and upon the Licence to enter, without suing such Writ. C

If the King be Lord, and there be Mesne and Tenant, and the Tenant holdeth of the Mesne by Homage and twenty Shillings, and the Mesne holdeth of the King *in Capite*, and afterwards the Mesne doth release unto the Tenant the twenty Shillings, to hold to him and his Heirs by Homage, and a Penny, without the King's Licence, the King may seize those Services; and if he will by his Grant make Restitution to the Tenant Paravail, an *Ad quod Damnum* shall be granted, to inquire to whose Damage, &c.

And it appeareth by the Register, that if the King's Tenant doth intrude after the Death of his Ancestor without suing his Livery, if the King will pardon the Intrusion, yet a Writ of *Ad quod Damnum* shall issue to inquire to whose Damage the King's Pardon shall be, &c. D

If a Forester of the King's Forests, who holdeth his Office of the King, granteth the same to another, he ought to have the King's Licence; and before such Licence shall be granted, a Writ of *Ad quod Damnum* shall issue, what Damage such Licence shall be to the King. E

(a) Note; If the King grants Liberties; as a Market, Fair, &c. to the King's Nuisance, after the King has lost any Profit, he may have a *Scire facias*, and repeal the Patent, and recover

all the Profits taken by the Patentee in the mean Time, *per Cur.* 11 H. 4. 5. See 16 Ed. 3. Grants 53. what Liberties the King may grant. *Vide post.* 230.

F And so if the King will license one to cut down his Trees or his Wood in his Forest, and to make Assart of the Wood, or to put it to Tillage, a Writ of *Ad quod Damnum* shall be awarded, as appeareth by the Register.

G And if the King will grant Parcel of his Waste within his Forest to another in Fee, rendring Rent, and that the Feoffee may inclose the same with a Hedge or a Ditch, &c. a Writ of *Ad quod Damnum* shall be awarded, to inquire to what Damage of the King or others the said Grant shall be.

And if he will lease the same for Years, rendring Rent, a Writ of *Ad quod Damnum* shall be awarded to the Keeper of the Forest, to what Damage of the King or of his Forest the same shall be.

And if the King will grant Part of his Free Chase to one in Fee rendring Rent, and that he may inclose the same with Hedge and Ditch, &c. a Commission shall be directed to certain Persons, to inquire what Damage to the King or others the same shall be, &c. and thereupon a Writ shall be directed to return the Inquest and Panel before the Commissioners at a certain Day assigned by the Commissioners; and the Commissioners shall make a Precept to the Sheriff to do the same, and to return them at the Day appointed by them by their Precept.

H And now it (a) appeareth by those Words in the Register, that in ancient Times, upon every Grant, Lease, Release, Confirmation or Licence to be made by the King, that first a Writ of *Ad quod Damnum* was to be awarded, to inquire of the whole Truth and every Circumstance thereof, and what Damage or Prejudice the King should have by the same; and upon such Inquisition certified and returned, to make the Grants, Releases, Confirmations or Licences.

But now the Experience is contrary, but in the Patents of Grants of Licence, they put in the End these Words,

And this without any Writ of Ad quod Damnum, or any other Writ, or Inquests, or Commands, thereupon, to be had, done, or prosecuted, &c.

But in Patents of Licences, or in a Patent of Release or Confirmation made by the King, these Words, *Without any Writ of Ad quod Damnum, &c.* are not in those Patents of Releases or Confirmations: But yet by Reason of the ancient Course and Form of the Register, it seemeth that the Patents were the better if these Words, *And this without any Writ of Ad quod Damnum,* were put into the Patents. *Quære* of the Rigour of the Law, what shall be done in those Cases where the Patents want those Words, &c.

(a) See 2 Ed. 3. 6. 16 Ed. 3. Brief 651. Grants 53. That if a Patent of Liberties be made without Inquiry by *Ad quod Damnum*, by Grant whereof the Interests of other Persons are prejudiced; the King is supposed to be deceived, and the Patent shall be repealed in a *Scire facias*.

Writ of being quit of Toll.

THE Writ to be quit of Toll lieth, where the Citizens or Burgesſes of any City or Borough have been quit of (a) Toll throughout the Realm by Grants of the King's Progenitors, or by Prescription; then if the ſaid Citizens, or any Man of the ſaid Cities or Boroughs, come with their Merchandiſes unto any Fair or Market, and there ſell them, or buy any Merchandiſe, if the King's Officer will demand Toll of them againſt the King's Charter or againſt the Uſage or Cuſtom, then they may ſue forth and have ſuch Writ; viz.

[227.] (b) *The King to his Bailiffs of I. greeting: Whereas we granted by our Charter to the Burgeſſes of our Town of S. that they and their Heirs and Succeſſors, Burgeſſes of the ſame Town, ſhould be for ever quit of Toll throughout our whole Realm and Dominion; We command you, that you permit thoſe Burgeſſes to be quit of yielding Toll to you in our ſaid Town, according to the Tenor of our Charter aforeſaid, not moleſting or in any wiſe aggrieving them contrary to the Tenor thereof. Witneſs, &c.*

And upon that he may have an *Alias*, a *Pluries* and Attachment againſt the Bailiffs, or thoſe that do grieve him againſt the Form of the Charter: And the *Pluries* is returnable in the King's Bench, or in the Common Pleas, at the Will of him who would have it. And in that Writ ſhall be the Clause, *Or ſignify the Cauſe to us.*

And if the Grant to be quit of Toll be of the Grant of the King's Progenitors, then the Form of the Writ is ſuch:

The King to the Bailiffs of I. of E. greeting: Whereas amongſt other Liberties granted to the Burgeſſes (c) of our Town of C. by the Charters of our Progenitors ſome time Kings of England, it is granted to them, that they and their Heirs for ever ſhould be quit of Toll throughout our whole Realm, which ſaid Charters we

(a) See 30 *Ed. 3.* 15. where is a Writ againſt the King's Bailiffs, and common Farmers in taking Toll, &c. For taking and detaining of Goods, &c. contrary to the Law and Cuſtom of the Realm, to the Wrong and Deſpight of the King, and Prejudice of his Farm, and to the Damage of the Plaintiff.

Note; The Prescription ought to be in the Affirmative, viz. to be quit of Toll, and not that he had not paid Toll. 14 *H. 6.* 12.

(b) Toll-traverse lies in Prescription, but not Toll-through; for it is an Oppreſſion of the People, 22 *Aff.* 58. yet ſee a common Perſon may preſcribe for Toll-through, if he ſhews a reaſonable Cauſe, and prove that the Country has a Recompence, 14 *Ed. 3. Bar.* 275. 5 *H. 7.* 10. and ſo the King may preſcribe for Toll-through; *quere*, if without ſhewing Cauſe. 11 *H. 6.* 39. *vide infra.*

(c) *Note;* Toll-traverse may be by Prescription or Grant; but Toll-through cannot be by either Grant or Prescription. 22 *Aff.* 58. 20 *Ed. 3. Toll.* 3. *Note;* Toll-through is in the Highway, but Toll-traverse is for paſſing over another's Land; yet it ſeems if a Highway be in a City or Town, Toll-through may be there by Prescription, 5 *H. 7.* 10. 13 *H. 4.* 15. and Pontage, Murage or Ferry may be demanded in a Highway by the King's Grant, but not in a private Way, 13 *H. 4.* 15. and ſee there that the King may grant Tronage, and good: And *Note;* Every new Office ought to be proclaimed as well as granted. *Ibid.*

Note; If the King grants to one to be quit of Toll, this does not extend to Cuſtom, as it ſeems, nor is it any Bar to a Demand of Toll by them who have Toll by a prior Grant made to them. 39 *Ed. 3.* 13. See 18 *Ed. 1. Lib. Parl.* 10.

have already confirmed by our Charter, and have moreover granted to them, that although they have not fully used any of the Liberties and Quittances contained in the same Charters until this present Time; nevertheless they, their Heirs and Successors for the Time to come, may enjoy and use the Liberties and Quittances aforesaid, and every of them, without Disquietude or Hindrance; We command you, &c.

C But that last Clause shall not be in the Writ, if the King have not made such Confirmation to them: And upon that he may have an *Alias* and a *Pluries*, and an Attachment, if need be, against those who take the Toll, &c.

D And the like Writ may be for those who ought to be quit of Murage, Pontage, Picage, Lastage, Passage, and the like, if they be grieved or disturbed.

And it appeareth in the Register, that King *Edward* the First did grant unto Merchants, Strangers and Aliens, that they should be quit of Murage, Pannage and Pontage, &c. If they were grieved and disturbed for the same, they should have such Writ; viz.

The King to his Collectors of Murage, Pannage and Pontage in the Town of S. greeting: Whereas in Consideration of the Payments and Customs to us by Merchants, Strangers and Aliens, of their Goods and Merchandises brought into our Realm, it is granted to them by the Charter of Lord Edward of renowned Memory, some time King of England, our Grandfather (which we have inspected) that they shall come safely and securely into our Realm and Dominion with their Merchandises whatsoever, and be free and quit of Murage, Pannage and Pontage, as in the said Charter is more fully contained: We command you, that you permit B. and his Companions, Merchants of the Company of, &c. Aliens, to be quit of yielding Murage, Pannage and Pontage in the said Town, according to the Tenor of the said Charter, not molesting or in any wise aggrieving them contrary to the Tenor of the same; and release to them the Distresses without Delay (if you shall have made any upon them on that Occasion) and if you shall have levied any Thing upon them since the 20th Day of August in the Year, &c. on that Occasion, restore it to them without Delay. Witnesses, &c.

E And if any City or Borough ought to be quit of Toll for the Merchandises which they buy in another Town or Place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the Name of their Corporation, and may have an *Alias* and Attachment thereupon, if need be, with these Words at the End of the Writ, *And the Distress, if any, shall be made upon them on that Occasion, &c.* as before.

F And the like Writ a Man may have against those who will compel him to pay a certain Sum of Money towards Reparation of any Bridge, of which he ought to be quitted.

And it appeareth by the Register, that spiritual and religious Persons ought to be quit of Toll, Customs, Murage, Pontage and Pannage, and of the like, for their Goods; and if they be troubled to pay the same, they shall have such Writ:

The King to his Bailiffs of B. greeting: Whereas ecclesiastical Persons, according to the Custom hitherto used and approved in our Realm (a), are by no means bound

(a) See Rot. Parl. 8 Ed. 2. m. 4. super Petition' Decan' & Capitul' Lincoln' esse quiet' de Paviagio. Resp' quod si ipsi vel Famuli sui juvandi

studio Mercaturarum exercent solvant inde Paviagium prout decet.

Writ of being quit of Toll.

to yield Toll, Pannage and Murage of their ecclesiastical Goods any where in the same Realm; We command you, that you do not distrain R. Parson of the Church of E. to yield to you Toll, Pannage or Murage of his ecclesiastical Goods in our said Town, contrary to the said Custom; yet so that he do not exercise any Merchandise with the same; and the Distress, if any, &c.

But Herle Justice said, that these Words, *Dum Merchandisas aliquas, &c.* were of no Effect, because, by his Opinion, they are acquit of all Things, although they do merchandize: But now the Statute of H. 8. is, that they shall not merchandize.

And another Form of Writ for spiritual Persons is in this Form:

[228.] *Whereas according to the Custom, &c. obtained, ecclesiastical Persons ought not to yield any Toll or other Custom of their ecclesiastical Goods, or of other Things bought for their Sustenance; We command you, that you by no means distrain A. Parson of, &c. to yield any Toll or other Custom of his ecclesiastical Goods sold, or of others bought for his Sustenance, contrary to the Custom aforesaid; and the Distress, if any, &c. (as above).*

By which Writs it appeareth how spiritual Persons shall be discharged of those Tolls, and Impositions and Exactions for their Goods which they sell or buy for their Sustenance, &c.

Tenants of Ancient Demesne by the Custom of the Realm ought to be quit of Toll, &c. in every Market, Fair, Town or City throughout the Realm; and upon that every one of them may sue to have Letters Patent under the King's Seal, to all the King's Officers, and to Mayors, Bailiffs, &c. and the Form of the Patent is such:

The King to all Bailiffs and Ministers wheresoever appointed within our Realm of England, greeting: Whereas according to the Custom, &c. (as above, till) throughout our whole Realm; We command you, that you by no means distrain the Men of our Manor of S. (if that Manor be of the Ancient Demesne of the Crown of England) to yield Toll to you, &c. according to the said Custom; and the Distress, (if any) &c. In Witness whereof, &c. Witness, &c.

And also the Tenants of Ancient Demesne may have a Writ directed to the Bailiffs or Mayor, or others who will compel them to pay Toll, that they suffer them to go quit, &c. and the Form of the Writ is such:

The King to his Bailiffs A. &c. of I. greeting: Whereas according to the Custom of our Realm hitherto obtaining and approved, the Men and Tenants of the Ancient Demesne of the Crown of England are and ought to be quit of yielding Toll throughout our whole Realm; nevertheless you grievously distrain the Men and Tenants of the Manor of S. which is of the Ancient Demesne of the Crown of England, as it is said, to yield Toll to you of their Goods and Things in the said Town, and many ways unjustly disquiet them upon that Occasion, to the great Damage of them the said Men and Tenants, and contrary to the Custom aforesaid, as we have received Information from their Complaint; And we willing that no Injury be done to those Men and Tenants, command you, that (if it be so) then desisting for the time to come from bringing such Distresses and Disquietudes upon the said Men and Tenants on that Occasion, you permit them to be quit of yielding such Toll to you of their Goods and Things aforesaid in the same Town, according to the Custom aforesaid, and the Distress; if any, &c.

And

And by the Writ aforefaid it doth appear, that Tenants in Ancient Demeſne ſhall be quitted of Toll, as well thoſe Tenants who hold of the Manor which is Ancient Demeſne, which is in the Seifin or the Poſſeſſion of another Man, than of the King, as the Tenants of Ancient Demeſne, which hold of the Manor in Ancient Demeſne, which is in the King's Hands and Poſſeſſion.

And it appeareth alſo, that they ſhall be quit of Toll for their Goods and Chattels which they merchandize with others, as well as for their other Goods; for the Writ is general, *pro bonis & rebus ſuis*.

B And it appeareth that that Writ may be ſued by all the Tenants, as a Writ of *Monſtraverunt* ſhall be ſued; and alſo that every particular Perſon who is grieved may ſue forth the Writ, if he will.

And alſo the Lord (*a*) in Ancient Demeſne himſelf ſhall be as well acquitted of Toll throughout the Realm, as the Tenants in Ancient Demeſne ſhall be; and that appeareth by the Register, of an Attachment ſued by the Lord of the Manor in Ancient Demeſne againſt the Bailiffs of *C*. becauſe they took Toll of him. And they ſhall not be only quit of Toll, but alſo of Pontage, Paſſage, and the like.

C And alſo they ſhall not be contributory to the Expences of the Knights in Parliament; and if the Sheriff will diſtrain them, or any of them, to be contributory for their Lands in Ancient Demeſne, then they may ſue forth a Writ directed to the Sheriff, that he do not compel them to be contributory to the Expences of the Knights, &c. Commanding them in the ſame Writ, that if they do diſtrain them, or any of them, that they re-deliver the Diſtreſs, &c. And the Writ may be ſued by all together, as a *Monſtraverunt* ſhall be directed unto the Sheriff, or by any of them who are diſtrained.

D And Tenants at Will within Ancient Demeſne ſhall be diſcharged of Toll, as well as the free Tenants, or Tenants for Term of Life, or for Term of Years of Lands in Ancient Demeſne, ſhall be diſcharged of Toll for their Goods, &c. 9 *H.* 6. 14.

E And (*b*) ſee 7 *H.* 4. that a Tenant in Ancient Demeſne may merchandize, buy and ſell, and ſhall not pay Toll: And the ſame agreeth with the Register. But *T.* 9 *H.* 6. it is holden, that they ſhall not pay Toll of Things coming of their Tenements within Ancient Demeſne, nor for Things bought for their Su-

(*a*) Note; It does not appear by this Writ, what was Ancient Demeſne. See Register 260. accordant, *N. B.* 2 *Lutw.* 1145, 1146.

(*b*) The Caſe, 7 *H.* 4. 44. In Treſpaſs againſt *A. Quod Telonium aſportavit, & illud ſolvere recusavit*, (it was held that the Writ was good, and the firſt Words as to the *Aſportavit* void): The Plaintiff counts, that the Defendant had bought twelve Beaſts in his Market, and that he came the next Market in the next Week, and ſold ſix of the Beaſts (Oxen) and the other ſix at a Fair there held at the Feaſt of, &c. Defendant pleads that he is a Tenant of Ancient Demeſne, &c. and that all thoſe Tenants have been free to buy and ſell Beaſts for manuring their Lands, &c. without Toll, &c. Time out of Mind, and

that he bought *ut ſupra*, and ſome he uſed for manuring his Land, and ſome he put to Paſture to make Graſes, and after convenient Time ſold them, &c. The Plaintiff offers to aver, that he bought the Beaſts to re-ſell them, and that he re-ſold them *ut ſupra*; the Defendant demurs; but the Opinion of the Court being againſt him, he became Nonſuit: So that it ſeems for Things bought for their Suſtenance, or manuring their Lands, or concerning Huſbandry, they are diſcharged, but not to merchandize; and the Merchandize of theſe is different from other Merchandize. See 9 *H.* 6. 15 and 66. 3 *Ed.* 3. (*Toll*) 138.

See Goods of the Vendor diſtrained for Toll. 20 *Ed.* 3. *Avowry* 129. See 9 *H.* 6. 45.

19 H. 6. 66. Newton. stenance, &c. but for other Things it is a Question: But forasmuch as they shall be quit of Pontage, Murage and Passage, I conceive that they shall be quit of Toll generally, although they do merchandize with their Goods. And the Toll ought always to be paid by the Buyer, and not by the Seller: If it be not by some special Custom, &c.

And the Villains of Lords who come to Parliament shall not be Contribu- F
 [229.] taries to the Expences of the Knights of the Counties who come to the Parliament; but the Lords shall have Letters in their own Names directed to the Sheriff, commanding him that he do not distrain their Villains to be contributory to those Expences of the Knights, and if he hath distrained them, to deliver the same to the said Villains.

And it seemeth reasonable that the Villain may, if he will, sue the Writ, as well as the Lord, &c. which Writs do appear amongst the Writs to be quit of Toll.

And also Chaplains who are Masters of the Chancery, who are Attendants A
 at Parliaments, shall not be contributory by reason of their Benefices unto the Expences of Proctors made for the Clergy who come to the Parliament; and if they be, they shall have a Writ to the Archdeacon and his Officers, commanding them for to discharge them, and upon that they may have an *Alias* and a *Pluries*, and Attachment against them; and the Writ is such:

The King to the Archdeacon of Middlesex and his Official, and to their Commissary, greeting: Whereas in our Parliament called together at Westminster in the fourth Year of our Reign, it was there agreed by us, and by the Prelates, Earls, Barons, and our whole Council, that our beneficed Clerks of the Chancery personally attending in our Parliaments, Councils and Treaties, for the Service of us and the People of our Realm, are to be quit from contributing, by reason of their Benefices, towards the Expences of the Proctors of the Clergy of any Diocese, they coming by our Command to such Parliaments, Councils and Treaties: We willing the said Agreement to be kept inviolable in all Things, especially with respect to paying towards the Expences aforesaid, by reason of the Absence of those who were not at the said Parliaments, &c. command you, that you by no means compel, or any wise permit to be compelled by your Ministers, T. Parson of the Church of N. in the Diocese of London, who is a Clerk of our Chancery, and who was present in our last Parliament held at Westminster, in the Service of us and the Commons of our People, to contribute, by reason of his Benefice, to the said Expences of Proctors who came to the said Parliament for the Clergy of the said Diocese, or of other Proctors who shall happen to come to other Parliaments, &c. by us now to be holden, while he shall attend such Services, but cause him to be quit of such Expences, according to the Agreement aforesaid; and if any thing shall have been levied upon him on that Occasion, restore it to him without Delay, and also cause the Processes to be superseded (if any have been made towards ecclesiastical Censures against him for the Cause aforesaid) and the Sentences to be revoked (if any have been fulminated out against him). Witness, &c.

Quere for that Statute: And by that appeareth, that the Parliament may bind the Clergy by the Acts and Statutes made in Parliament.

(a) *Writ de Libertatibus allocandis.*

B **T**HE *Writ de Libertatibus allocandis* lieth, where any Citizen or Burgefs, or other Man, is impleaded before the King's Juftices, Juftices Errant, or Juftices of the Forest, and he claimeth and pleadeth any Grant of Liberty made unto him by the King, or unto any City or Borough whereof he is a Burgefs, and the Juftices do delay to allow that Liberty; then he who is fo delayed by the faid Juftices, may fue forth fuch Writ directed to the Juftices, commanding them to allow the fame; and the Writ is fuch:

The King to his Juftices of the Bench, greeting: Because our Burgeffes of N. by the Charters of our Progenitors, fome time Kings of England, claim to have divers Liberties which they and their Predeceffors Burgeffes of the fame Town have always hitberto, from the time of the making of the faid Charters, ufed and en-

(a) *De Libertatibus allocandis.*

Note; Liberties may be allowed in the Time of the King who granted them, without any Writ of Allowance. See 2 *H.* 5. 4. 34 *H.* 6. 54. For Allowance of Liberties, fee 14 *H.* 6. 12.

If the King grants Conufance of Pleas, or to be difcharged from ferving on Juries, &c. he fhall have no Advantage of it without fhewing it in Allowance. 39 *Ed.* 3. 15.

What Liberties the King may grant.

Regularly he cannot grant fuch Liberties as are prejudicial to the Subject, without the Affent of Parliament: *Note* the Cafe of *John Marfkall*, viz. The King granted to one *J. S.* the Meafuring of Cloths, Canvas, &c. bought and fold in *L.* as well between others, as between Citizen and Citizen, for a certain Sum, &c. *J. S.* dies, the King grants the fame Office to *J. M.* and a Writ iffued to the Mayor and Sheriffs of *London* to receive him; and at the *Sicut alias* it was returned, that there was not any fuch Office in the City, &c. and fome for the King furnifed the contrary; whereupon a *Pluries* and an Attachment iffued, and on the Return the Matter aforefaid was fhewn to the Court, &c. And it was refolved, 1. That forasmuch as the faid Officer was a Charge to the Subject, for he took certain Fees from the People (where they had an Aulnager before) That as the firft Grant was void, and that what he took was Extortion, and not as an Officer; fo on the new Patent to *J. M.* the Mayor might well return that there was not any fuch Office. *Ratio*: For if the

Mayor and Sheriffs could not make fuch Return, they would be etopped by their Admittance, to fay it afterwards, although fuch Admittance by the Mayor and Sheriffs fhould not work any Prejudice to another. And fo there is a Diverfity, when the Office granted by the King has an Intereft or Charge, by reason of the Matter or Thing granted, there they may return the Matter, &c. although it goes in Bar of the King's Title; *contra* if the Officer hath nothing to do with the Matter, but only as Officer, without charging the Subject; and accordingly it was adjudged: And it was then faid by *Gafcoign*, that the King may charge his People, without Affent of the Commons, in a Thing that is for the Good or Profit of the People; as he may grant Pontage, Murage or a Ferry; but if the King grants Murage to fuch a Town, where I and my Tenants have Paffage through the Town; though fome of my Tenants pay the Custom, yet I may forbid the extorting of it. 12 *H.* 4. 87. 13 *H.* 4. 14, 15. See the Office of Brocage not grantable by the King. 21 *Ed.* 4. 79. *Rot. Parl.* 13 *H.* 4. m. 43.

As to the King's Grant of Tolls, &c. *vide ante* 227. And *Note*; Every new Office ought to be proclaimed as well as granted. 13 *H.* 4. 15. If the King grants to one to be quit of Escapes, this cannot be intended voluntary Escapes. 3 *H.* 7. — The King cannot by his Patent difcharge one who is bound by Prefcription to make or repair a Bridge; but of Contribution to a Bridge he may difcharge, *ut videtur*. *Quere* 3 *Ed.* 3. *Aff.* 445. but he may difcharge a Fine for it. 57 *H.* 6. 4.

Writ de Libertatibus allocandis.

joyed, as they say; We command you, that you permit them the said Burgeses, in the Bench before you, to use and enjoy the Liberties aforesaid, according to the Tenor of the Charter aforesaid, as they ought to use and enjoy them, and as they and their Predecessors have always, from the time aforesaid, hitherto been accustomed reasonably to use and enjoy those Liberties. Witness, &c.

And if any do claim a special Liberty to be impleaded within the City or Borough, and not out of the City, then the Writ shall be special, thus:

The King to the same, greeting: Whereas amongst other Liberties which for the Improvement of our Town of R. are granted by the Charters of our Progenitors some time Kings of England, to the Burgeses of the same Town, it is granted to them, that they shall not implead or be impleaded any where else than within the said Borough before, &c. of the same Town, touching any Tenures therein, or Trespasses and Contracts committed or made within the same Borough, as in the Charters aforesaid is more fully contained; which said Liberty they the said Burgeses and their Predecessors Burgeses of the same Town, from the time of making of the Charters aforesaid always hitherto have reasonably used, as they say: We command you, that you permit them the said Burgeses before you to use and enjoy the Liberty aforesaid, according to the Tenor of the Charters aforesaid, as they ought to use them, and as they and their said Predecessors from the time aforesaid always hitherto have been accustomed to use and enjoy them. Witness, &c.

[230.] And every one who claimeth any Liberty, and justifieth by the same any Act done by him in any Court before any Manner of Justice or Justices, and the Justices will not allow that Liberty, or delay to allow the same, then he may sue forth that Writ. And those Writs are of several Forms, as appeareth by the Register, and may be sued by a Body Corporate or by a single Person, as the Case shall happen, &c. And the Barons of the Cinque Ports may sue forth such Writs, if they be delayed to have their Liberties allowed unto them.

And the like Writ may be sued to the Justices of the Forest, commanding them to allow Charters granted to any Persons, to have Pasture, or to be quit of Pannage there.

Writ de Corrodio habendo.

A **T**HE Writ *de Corrodio habendo* lieth, where the King is the Founder in the Right of his Crown of any Abbey (a) or Priory, or other religious House. Now of common Right the King ought to have a Corrody, and a reasonable Allowance for any of his Vadelets in the same House. And so of every Bishoprick in *England* and *Wales*, the King ought to have a reasonable Pension for his Chaplain, until the (b) Bishop have promoted him to a convenient Benefice. And the Form of the Writ for the Corrody is such:

1 Ed. 4. 10.
So every common Person, if he be Founder, and doth not give in Frankmoigne: 44 Ed. 3. 24. and 50 Aff. 6.

Vide 21 Ed. 4. 8. That the King writ for his Vadelet by his Prerogative, by which Br. collects, that a Founder, common Person, shall not have a Corrody.

14 H. 6. 11. If the King found a Frank-chapel, he shall not have a Corrody nor Pension.

The King to his beloved in Christ the Prior and Convent of N. greeting: We, willing that for our beloved Valet of S. fit Corrody be provided for him, have commanded him to be sent to you, requiring that, admitting him the said S. into your said House, such Corrody be administered to him in all Things, as P. now deceased had while he lived in the same, and cause to be made and delivered to him upon this Occasion your Letters signed with the common Seal of your House, making mention of those Things which he shall so receive in your same House, for doing which for us we will be especially bound to your House for the future; and what you shall order to be done upon this our Request write back again to us by the Bearer of these Presents. Witness, &c.

1 Ed. 4. 10.
The Writ ought to contain the King's Title to the Corrody.

There is another Form of Writ, where the King will write for the Servants of his Grandfather or Father, thus:

The King to the same: We regarding the acceptable and laudable Services which our beloved Servant A. hath hitherto done to our Grandfather and us, willing for him the said A. (who is not yet provided for of his Maintenance by them our Grandfather or Father, or by us) to provide such Support as we are bounden, have commanded him to be ordered to you, requiring that, admitting him the said A. into your said House, you administer to him such (Corrody or) Support, both in Victuals and Cloathing and other Necessaries, as R. lately deceased had by the Command of our Grandfather, to be perceived in your said House, and cause to be made and delivered to him on this Occasion your Letters Patents, &c. (as above).

(a) It seems, if the King founds an Abbey to hold of an Honour, he shall not have a Corrody. *Quere* 24 Ed. 3. 72.

(b) This is due from every Bishop of common Right, and cannot be discharged by Prescription. 9 Ed. 4. 40, &c. There the Bishop of St. David's was charged, that he had alledged, 1. That it was of the Foundation of the Prince of *Wales*, and that the Avoidance belonged to the Principality; whereto it was answered, that be-

fore the Conquest that Principality was held of the King as of his Crown; and by Forfeiture of the Prince of *Wales* became re-annexed to the Crown, with all Patronages of the Bishoprick. 2. That although the Principality was given to the Prince, yet for that the Bishop had sued the Temporalities out of the King's Hands in Chancery, he was chargeable to the King. 10 H. 4. 6.

See a Corrody for a Feme in the Priory of *Bermondsey*. *Lib. Parl. Ed.* 1. 193.

And

Note; If an Abbey which a common Person hath cometh to the King by Escheat; yet he shall not have a Corrody, because it is not of his Foundation. L. 5 Ed. 5. 118. Br. Corrod. 1. 6. Yet the King may have a Corrody where he is not Founder, but that is by special Grant. 2 Ed. 4. 10.

38 Ed. 3. Br. Contemp. 5. and 39 H. 6. 48. If the Abbot will not admit the King's Vadelet, he who ought to be admitted shall recover Damages, and not the King, for that the King hath only the Presentation to the Corrody, and the Party the Damages.

44 Ed. 3. 25. per Knevit, if the King and another give Land to erect, &c. the King is Founder.

his good Service to us done and to be done, for whom fitting Support is not yet, &c. as above.

(a) And upon these Writs, if the Abbot or Prior will not do according as he is directed to do by the Writ, an *Alias* and a *Pluries* shall be awarded, or signify the Cause to us shall be in the Writ of *Pluries*, and shall be returned unto the King's Bench; and if he do not return the same, an Attachment shall be awarded against the Abbot, Prior or Priores.

And if the King write for such Corrody unto an Abbey or Priory, and they grant Parcel of the Corrody unto him for whom the King writeth, but not

22 Ed. 4. 17, 18, 19. Huffey and Fairfax. If an Abbot grant to A. to have a Corrody, nihil operatur by the Grant: But if he grant a Corrody, or so much Bread and Ale, &c. it is a good Grant of those Things, but it is no Corrody, but a Profit; for every Corrody hath his Beginning by the Foundership.

all, nor so much as others had before; then the King, upon a Surmise thereof made in the Chancery, shall grant a Writ of *Sicut alias* directed unto the said Abbot or Prior, &c. desiring them that they grant the like Livelihood in all Things as any other hath had before in the same House.

And if the Abbot or Prior upon the *Pluries* return any Matter of Excuse, wherefore he ought not to grant such Corrody, which Return seemeth unto the Court where the Return is made, be it in the Chancery or in the King's Bench, to be no sufficient Return, then the King shall grant such Writ:

The King, &c. greeting: Whereas we being lately willing to provide for our beloved N. of a fit Support, by reason of his long Service to Lord Edward lately King, our Grandfather, and to us done, sent him to you, and have oftentimes commanded you, requiring that you should admit him the said N. into your House, and grant to him such Support, &c. and should make your Letters, &c. or should signify

(a) If the Abbot returns Cause at the *Sicut alias*, and none comes on the King's Part to counterplead the Cause, the Abbot shall be discharged. 11 H. 4. 81. But if any comes for the King, and counterpleads the Cause, they shall not interplead thereon, but a *Pluries* and an Attachment shall issue, and on the Attachment they shall plead, by *Quoignis*. 11 H. 4. 87.

Note; It was *Venire coram Concilio*, and there the Title of the Patronage was in Issue, and found for the King; and adjudged, that the King should recover the Patronage, and the Temporalities be seized, for that they elected the Prior without the King's Leave, &c. 38 Aff. 22. Vide post. 231. B.

the Cause to us wherefore you have not obeyed our Commands so often directed to you thereupon, and you have sent to us in our Chancery certain Causes of Excuse, which we think insufficient; Therefore we command you, firmly injoining that you admit the same N. into your House, &c.

F And if an Abbot or Prior at the King's Request do grant a Corrody to B. for Life, and afterwards B. will surrender the Grant of his Corrody unto the Abbot or Prior, to the Intent that C. have the same for his Life, then he ought for to sue a Writ to the Abbot or Prior, thus:

[231.]

The King to his beloved, &c. the Prior and Convent of R. greeting: Whereas our beloved S. at our Request obtained a certain Corrody in your said Priory, and is willing that our beloved Valet N. may have the whole Estate which the same S. hath in the Corrody aforesaid, and for that Purpose S. is ready to surrender to you the Letters Patents by you made to him of the said Corrody, as he says, beseeching us that we will vouchsafe to yield our Assent hereunto; We regarding the Prayer of him the said S. and moreover being willing to do the said N. a more abundant Favour in this Matter, command you, requiring that if the said S. is willing to surrender the said Letters to the Purpose aforesaid, then having received those Letters into your Power, admitting him the said N. into your said House, grant to him to perceive of your said House the said Corrody for the whole Life of him the said N. and cause to be made and delivered to him your Letters Patent for the said Corrody under the Seal of your said House; and what you shall order to be done at this our Request, write back again to us by the Bearer of these Presents. Witnesses, &c.

19 Ed. 3.
Fines 50.
A Fine was
levied of a
Corrody.
10 Aff. 11.
Br. Corrod. 2.

Nuper obiit of a Corrody, and Dec' de libero Tenem', quod vide 14 H. 6. 11 and 12. Affise lieth of a Corrody, contrary of a Pension.

A And upon that he shall have an *Alias* and a *Pluries*, and Attachment; if need be.

B And if an Abbot or a Prior admit one to a Corrody upon the King's Writ sent him, if he dieth who is so admitted, the King may write for another to have the same Corrody. 14 H. 6. 11, 12.

But if the King have a Pension in any Abbey or Priory for his Chaplain, if the Abbot or Prior upon the King's Letter grant a Pension to his Chaplain, and the Chaplain dieth, the King cannot write for, or grant a new Pension unto another Chaplain during the said King's Life; and if he do, the Prior is not bound to grant the same; but it is otherwise of a Corrody. 14 H. 6. 11 and 12.

And yet some say, that upon the Cession of an Abbot or Prior, the King shall have a new Pension granted to his Chaplain; but *quare* of that. 14 H. 6. 12.

C And if the King have a Corrody in an Abbey or Priory to have certain Bread and certain Gallons of Beer, &c. the King may grant the same to several Men; but where he hath a Corrody to have Livelihood of one Man, to fit with the Servants of the Abbot, there he cannot grant the same but to one Man only. And the King may release to the Abbot or Prior his Title to the Corrody, if he will. 8 Ed. 4. 17. 20. 14 H. 6. 11 and 12. 8 H. 7. 12. 24 Ed. 3. 53. 15 Ed. 3. and 14 Ed. 3. and

24 Ed. 3. 33. 14 Ed. 3. Corrody 7 and 4. and Corrody 4 and 5. Co. Lit. 97. a. 50 Aff. 6. 44 Ed. 3. 24. 25.

(a) And

Writ de Annua Pensione.

(a) And if the Abbot or Prior do receive one to a Corrody upon the King's Letter, and thereupon doth make him a Grant thereof; thereby the Abbot or Prior and their Successors shall be bound for ever. Otherwise it seemeth, if the Abbot had granted the same upon the King's Request.

And *T. 4 Ed. 3.* it is holden, that the Abbot or Prior who holdeth of the King in *Frankalmoigne* shall not be chargeable with any Corrody.

Writ de Annua Pensione.

AND when the King hath a yearly Pension out of an Abbey or Priory for G his Chaplain, the King shall send his Writ unto the Abbot or Prior, &c. to grant the said Pension to his Chaplain; and the Writ shall be such:

The King to his beloved in Christ the Abbot and Convent of C. greeting: Whereas you by reason of your Creation of the said Abbey are bounden to one of our Clerks (whom we shall be moved to name) in a certain yearly Pension to be received of your House, until he shall be provided of a competent ecclesiastical Benefice; and we desiring the Promotion of our beloved Clerk A. (from his Merits requiring it) are moved to name him to receive such Pension of you; Therefore we command you, that you grant to him the said A. such Pension to be received of your House in Form aforesaid, as may become the Givers, and may render the Receiver more strongly obliged, hereupon causing to be made and given to him the said A. your Letters signed with the Seal of your Chapter; and what you shall be induced to do thereupon, write back again to us without Delay. Witnesses, &c.

And the Form of the Grant of the Pension is such: H

To all to whom these present Letters shall come the Abbot of T. and the Convent of the same Place send greeting, &c. Know ye that we, at the Instance of the most illustrious Prince Edward by the Grace of God King of England, have given and granted to our beloved in Christ A. Clerk, one hundred Shillings Sterling, to be received of our Chamber in the Feast of Saint Michael yearly, until we shall have provided for the same A. a competent ecclesiastical Benefice for him, and this we promise to do for him as soon as an Opportunity shall offer itself; but the said A. by himself, or his Proctor lawfully appointed for this Purpose, may receive the said one hundred Shillings every Year at S. In Witness, &c. we have commanded the common Seal of our House to be put. Dated in our Chapter, &c.

And it appeareth by an ancient Roll in the Exchequer, of what Abbies or Pories the King ought to have a Corrody and Pension, and of what a Pension only, and of what a Corrody only; the Copy of which followeth:

(a) See 18 *Ed. 3. 2.* *In libera Capella Regis,* Priory and Convent. 14 *H. 6. 12.* for the Pri- although the King had before translated it to the ory of Saint Bartholomew.

The Names of the Corrodies and Pensions in England which are of the King's Gift, according to the Book in the Exchequer.

I N the Abbey of <i>Glaffenbury</i> ,	1 C.	In the Abbey of <i>Thorney</i> ,	1 C.	1 P.	
	1 P.	In the Abbey of <i>Ramsay</i> ,	1 C.	1 P.	
In the Abbey of <i>Mochelny</i> ,	2 C.	1 P.	In the Abbey of <i>Peterborough</i> ,	1 C.	1 P.
In the Abbey of <i>Tewksbury</i> ,	1 C.	In the Abbey of <i>Crowland</i> ,	1 C.	1 P.	[232.]
In the Abbey of <i>Clive</i> ,	1 C.	1 P.	In the Abbey of <i>St. Benediēt</i> in <i>Norfolk</i> ,		
In the Abbey of <i>Ford</i> ,	1 C.			1 C.	1 P.
In the Abbey of <i>Buckfast</i> ,	1 C.	In the Abbey of <i>Bury</i> ,	1 C.	1 P.	
In the Abbey of <i>Sherburn</i> ,	1 C.	1 P.	In the Abbey of <i>Tetsurth</i> ,	1 C.	1 P.
In the Abbey of <i>Abbatbury</i> ,	1 C.	1 P.	In the Abbey of <i>Pipwel</i> ,	1 C.	1 P.
In the Abbey of <i>Bewdley</i> ,	1 C.	1 P.	In the Abbey of <i>Leicest.</i>	1 C.	
In the Abbey of <i>Shaftsbury</i> ,	1 P.	In the Abbey of <i>Newsted</i> ,	1 C.		
In the Abbey of <i>Winton</i> ,	1 C.	1 P.	In the Abbey of <i>Pomfret</i> ,	1 C.	1 P.
In the Abbey of <i>Worwel</i> ,	1 P.	In the Abbey of <i>Worstore</i> ,	1 C.		
In the Abbey of <i>Hide</i> ,	1 C.	1 P.	In the Abbey of <i>Blith</i> ,	1 C.	
In the Abbey of <i>Battel</i> ,	1 C.	1 P.	In the Abbey of <i>Waltham</i> ,	2 C.	1 P.
In the Abbey of <i>Waverly</i> ,	1 C.		In the Abbey of <i>Barking</i> ,	1 C.	
In the Abbey of <i>Malmfbury</i> ,	2 C.	1 P.	In the Abbey of <i>Tower-hill</i> ,	1 C.	
In the Abbey of <i>Sleeveburn</i> ,	1 P.	In the Abbey of <i>Bermondsey</i> ,	1 C.		
In the Abbey of <i>Southwick</i> ,	1 C.	1 P.	In the Abbey of <i>Christchurchland</i> ,	1 C.	
In the Abbey of <i>Susester</i> ,	2 C.	1 P.		1 P.	
In the Abbey of <i>Stonley</i> ,	1 C.	In the Abbey of <i>Feverham</i> ,	1 C.		
In the Abbey of <i>Bristokom</i> ,	1 P.	In the Abbey of <i>Chirsey</i> ,	1 C.		
In the Abbey of <i>Hurtey</i> ,	1 C.	In the Abbey of <i>St. Mary</i> in <i>York</i> ,	1 C.		
In the Abbey of <i>Reading</i> ,	1 C.	1 P.	In the Abbey of <i>Durham</i> ,	1 C.	1 P.
In the Abbey of <i>Messenden</i> ,	1 C.	In the Abbey of <i>Tinmouth</i> ,	1 P.		
In the Abbey of <i>Glocester</i> ,	2 C.	1 P.	In the Abbey of <i>Withy</i> ,	1 C.	1 P.
In the Abbey of <i>Langton</i> ,	1 P.	In the Abbey of <i>Mewes</i> ,	1 C.		
In the Abbey of <i>Perfbore</i> ,	1 C.	1 P.	In the Abbey of <i>Altney</i> ,	1 C.	1 P.
In the Abbey of <i>Winchcomb</i> ,	1 C.	1 P.	In the Abbey of <i>Wardow</i> ,	1 C.	
In the Abbey of <i>Osney</i> ,	1 C.	1 P.	In the Abbey of <i>Criston</i> ,	1 C.	
In the Abbey of <i>Tame</i> ,	1 C.	In the Abbey of <i>Selby</i> ,	1 C.		
In the Abbey of <i>Dorcester</i> ,	1 C.	1 P.	In the Abbey of <i>Sparhall</i> ,	1 C.	
In the Abbey of <i>Abingdon</i> ,	2 C.	1 P.	In the Abbey of <i>Dorsey</i> ,	1 C.	
In the Abbey of <i>Evesham</i> ,	1 C.	1 P.	In the Abbey of <i>Spalding</i> ,	1 C.	
In the Abbey of <i>Godstow</i> ,	1 P.	In the Abbey of <i>St. Augustine</i> in <i>Canter-</i>			
In the Abbey of <i>Notley</i> ,	1 C.	<i>bury</i> ,	1 C.	1 P.	
In the Abbey of <i>Southampt.</i>	1 C.	1 P.	In the Abbey of <i>Thornton</i> ,	1 C.	1 P.
In the Abbey of <i>Lisil</i> ,	1 C.	In the Abbey of <i>Twierdart</i> ,	1 C.		
In the Abbey of <i>Shrewsbury</i> ,	1 C.	1 P.	In the Abbey of <i>Novynton</i> ,	1 P.	
In the Abbey of <i>Chester</i> ,	1 C.	1 P.	In the Abbey of <i>Cotesball</i> ,	1 C.	
In the Abbey of <i>Vale Royal</i> ,	1 C.	In the Abbey of <i>Monmouth</i> ,	1 C.		
In the Abbey of <i>Burton</i> ,	1 C.	1 P.	In the Abbey of <i>Westminster</i> ,	1 P.	
			Y y y	In	

Writ de Idiota inquirendo & examinando.

In the Abbey of St. Saviour's in Canterbury,	1 C. 1 P.	In the Priory of Royston,	1 C.
In the Abbey of Daventry,	1 C.	In the Abbey of Kennelworth,	1 C. 1 P.
In the Abbey of Cristal,	1 C.	In the Priory of Coventry,	1 C.
In the Abbey of Stratford,	1 C.	In the Priory of Tutbury,	1 C.
In the Abbey of Milton,	2 C.	In the Priory of Ely,	1 C.
In the Abbey of Serne,	1 C. 1 P.	In the Priory of Bedwell,	1 C.
In the Abbey of Combe,	1 C.	In the Priory of Norwich,	1 C. 1 P.
In the Abbey of Grenuby,	1 P.	In the Priory of Lenton,	1 P.
In the Abbey of Merival,	1 C. 1 P.	In the Priory of Sefword,	1 C.
In the Priory of Bath,	1 C.	In the Priory of Merton,	1 C. 1 P.
In the Priory of Montagu,	1 C.	In the Priory of Lewes,	1 C.
In the Priory of Tavestock,	1 C.	In the Priory of Wenlock,	1 C.
In the Priory of St. Augustin in Bristol,	1 C. 1 P.	In the Priory of Winchefter,	1 C. 1 P.
	2 C. 1 P.	In the Priory of Bordsly,	1 C.
In the Priory of Almsbury,	1 C.	In the Priory of Standeate,	1 C.
In the Priory of Stetborne,	1 C.	In the Priory of St. Andrews in Northampton,	1 C. 1 P.
In the Priory of Bradstow,	1 P.	In the Abbey of Bodmyn in Cornwall,	1 C.
In the Priory of Worcester,	1 C.		
In the Priory of Sedsworth,	1 C. 1 P.	In the Abbey of St. James's in Northampton,	1 C. 1 P.
In the Priory of Dunstable,	1 C. 1 P.		

Writ de Idiota inquirendo & examinando.

Vide 256. D. **N**OTE, That the King by the Law, of Right, is for to defend his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every loyal Subject is taken into the King's Protection; and if he be put out of the King's Protection for his Offence, then every Man may do to him as against the King's Enemy, and he hath no Remedy for the same by the King's Laws. (a) And because that every Man is within the King's Protection, an Idiot, who cannot defend or govern himself, nor order his Lands, Tenements, Goods nor Chattels, the King of Right ought for to have him in his Custody, and to rule him and his Lands and Tenements, Goods and Chattels; and that appeareth by the Statute of *Prærogativa Regis*, cap. 8.

And therefore when the King is informed, that one who hath Lands or Tenements is an Idiot, and is a Natural from his Birth, the King may award his Writ to the Escheator of the County where such Idiot is, or unto the Sheriff, to inquire thereof; and the Writ which shall be directed to the Escheator shall be such:

Staundf. 34.
18 Ed. 3.
Sci. fac. 10.

(a) Note; If only a Right of Entry or Action descends to an Idiot, the King shall not have the Custody thereof. 1 H. 7. 24. 29 Ed. 3. 43. Also the Copyhold of an Idiot is not within the Ordering of the Court of Wards, but the Court of the Manor. Dyer 302.

Note; The King has the Custody of an Idiot to his own Use, not so of a Lunatick; therefore his Committee shall not have Aid of the King. Dyer 25.

The King to his Escheator, &c. greeting: Because we have received Information that I. of B. is foolish and an Idiot, so that he is not sufficiently able to govern himself, his Lands, Tenements, Goods and Chattels, and that he in his Foolishness hath aliened a great Part of his Lands and Tenements, and also hath wasted a great Part of his Goods and Chattels, to his own Disberison and our manifest Prejudice; We being willing to take care for the Indemnity of him the said I. in this Behalf, command you, that you go to him the said I. in your own Person, and circumspectly examine him by such Ways and Means touching his Condition, as you may best be informed; and nevertbeles diligently inquire by the Oath of honest and lawful Men of your Bailiwick, by whom the Truth of the Matter may be better known, whether the said I. be foolish and an Idiot, as is before said, or not; and if he be, then whether from his Nativity, or from any other Time, and if from any other Time, then from what Time, and how and in what Manner, and if he enjoys lucid Intervals, and whether he the said I. being in such Condition, aliened any Lands or Tenements or not, and if so, then what Lands and what Tenements, and where, and (a) to whom or what Persons, and in whose or what Persons Hands the Lands and Tenements so aliened are, and how and in what Manner, and what Lands and what Tenements so yet remain, and of whom or of what Persons as well the Lands and Tenements so aliened, as the Lands and Tenements retained to himself are holden, and by what Services, and how and in what Manner, and how much they are worth by the Year in all Issues, and who is his next Heir and of what Age: And the Inquisition thereof distinctly and openly made, send to us in our Chancery under your Seal and the Seals of those by whom, &c. and this Writ. Witness, &c.

[233.]

A And there are two other Manners of Writs of another Form in the Register, which are directed unto the Escheator, to go to such Idiot, and to examine him, and to inquire thereupon. And the Form of the Writ which is directed unto the Sheriff for to inquire of an Idiot, is such:

The King to the Sheriff, &c. We command you, that by the Oath, &c. you diligently inquire whether I. of B. the Brother and Heir of T. of B. was a perfect Idiot from the Time of his Nativity always hitherto, by which the Custody of his Lands and Tenements in C. ought to belong to us, or fell by Misfortune or other Manner into such Infirmity afterwards, for which such Custody ought not to belong to us; and if by Misfortune or other Means, then by what Misfortune, and how and in what Manner, and of what Age he was, and of whom the Lands and Tenements are immediately holden, and by what Services, and who now holds them, and how much they are worth by the Year in all Issues, and who in the mean time hath received the Issues thereof, and the Inquisition thereof distinctly and openly, &c.

And there is a Form of Writ directed to the Sheriff for to inquire of Idiots, which is much of the like Form as the first Writ above is; and it is directed to the Escheator to make the Inquiry.

And although a Man be found Idiot by Inquisition taken before the Escheator, or before the Sheriff, and by their Examination, &c. and that he returned into the Chancery; yet he who is so found Idiot may in Person, or by

(a) And a *Scire facias* shall issue against them. 13 Ed. 3. *Scire facias* 10. 32 Ed. 3. *ibid.* 106.

his Friends, come into the Chancery before the Chancellor and the King's Council, and shew the Matter, and pray that he may be examined before the Chancellor and the King's Council, whether he be Idiot or not; or he may sue forth a Writ out of the Chancery to certain Persons, to bring him who is so found Idiot before the King and his Council to *Westminster*, to be there examined; and if he be brought thither and examined, and found to be no Idiot, then the Inquisition found before the Escheator or Sheriff, and also the Examination which the Sheriff hath made, and returned thereupon, shall be of no Effect, but the same Office shall be taken as void, without any other Traverse, as it seemeth. And the Writ which shall be directed to the Party to bring the Idiot before the King's Council, shall be such:

16 Ed. 3.
Livery 30.

The King to I. of T. greeting: Because we are given to understand, that R. your Brother, the Son and Heir of B. deceased your Father, is an Idiot, and is not of sound Mind, so that he is not sufficient to take care for the Government of himself or his Lands; We being willing to be certified of the Condition of the said R. your Brother, command you, firmly injoining that forthwith, upon Sight of these Presents, the said R. being in your Custody, as it is said, without Delay you cause him to be brought before us and our Council at Westminster, so that he may be there upon this instant Thursday, there to be examined before our same Council, and to do thereupon that which upon the Advice of our Council we shall command to be ordained upon this Matter. And this you are in no wise to omit under the Pain of one hundred Pounds. Witness, &c.

And he who shall be said to be a Sot and Idiot from his Birth, is such a B Person who cannot account or number twenty Pence, nor can tell who was his Father or Mother, nor how old he is, &c. so as it may appear that he hath no Understanding of Reason what shall be for his Profit, or what for his Loss: But if he hath such Understanding, that he know and understand his Letters, and do read by Teaching or Information of another Man, then it seemeth he is not a Sot nor a natural Idiot.

Writ de Apostata capiend'.

THE Writ (*a*) de *Apostata capiend'* lieth, where a Man doth enter into Religion, and is professed, and afterwards he leaveth his House, and is Vagrant, and running about the Country, against the Rules of his Order of Religion; then the Abbot or Prior where he is professed may certify the same under his Seal into the Chancery, and pray to have a Writ to the Sheriff to apprehend him, and deliver him to the Abbot or his Attorney; and the Form is such:

The King to the Sheriff, &c. greeting: Because Frier I. Canon of A. despising the Habit of that Order, is Vagrant, and runs up and down from Country to Country in your Bailiwick in a secular Habit, to the Peril of his Soul, and the manifest Scandal of his Order, as our beloved Abbot of A. hath signified unto us by his Letters Patent: We command you, that you Arrest the aforesaid I. where-soever he shall happen to be found in your Bailiwick, and deliver him to the said Abbot, or to his Attorney in this Behalf, to be chastised according to the Rule of the Order aforesaid. Witnesses, &c. [234.]

A And upon that he may have an *Alias* and *Pluries* against the Sheriff, and an Attachment, if he will not execute the Writ.

B There is another Writ of another Form thus:

The King to the same, &c. greeting: Because Frier T. of the S. Order of Clune, professed in that Order, despising the Habit of that Order, &c. as our beloved in Christ the Abbot of B. by his Letters Patent hath signified to us: We command you, that, &c. (as above)

C And it seemeth, that although he who departeth from his House or Religion doth not change his Habit, yet if he be Vagrant, &c. and the Abbot of the House do certify the same, he shall have such Writ, notwithstanding these Words in the Writ (*spreto Habitu, &c.*) for those are but Words of Form, and not of Substance: for the Habit of Religion is the Obedience and Profession which he hath made to such Rule, &c. and if he relinquish that Obedience, and the Rules of that Religion, and departeth, it seemeth that he doth relinquish the Habit: And if that Departure be certified by any Abbot

(a) *Rot. Pat. 2 Ed. 1. M. 24.* A Patent made for the Procurator of the House of St. Anthony, to come and take up vagrant Friars, & *Si Fratres & procuratores dicti Don' contingentes & Nominis Fratrum prædictorum animalia & Bona petunt & recipiunt*, and commanding to arrest all such as go about without a Testimonial of the Procurator, and to take such Monies and Goods, and deliver them to the said Procurator; *Et si forsan Literas Regias Datum præsentium præcedentes super Admissione eorum ad hujusmodi Eleemosynas colligendas prædicti Procuratores Testimonium legitimum non habentes exhibeant, minime paratis, &c.*

See also 22 Ed. 3. 2. Trespas by the Prior of these Friars Preachers and A. his Confrere for a

Battery of the said A. *ad Dampnum prædicti Prioris*, against the Abbot of C. who pleads, that A was a Co canon of his House, and that he sued to the King, who commanded that he should take him where he could find him; whereupon he took him, and carried him to Prison. And by Order of Court he was put to confess that he was a *Frere* of the Plaintiff and demur, or else to traverse the Matter alledged; whereupon he pleaded by a Traverse, *absque hoc*, that he was *Frere* of the Plaintiff, and Issue being joined thereon, a Writ went to the Bishop of the Diocese where the Plaintiff was, who certified that he was his *Frere*.

where

Writ de Leproso amovendo.

where such Person was remaining, and under his Obedience when he departed and relinquished his Religion, the same is sufficient to have such Writ upon such Certificate; or if it be certified by him who is the Visitor of the religious House, &c. But there are not any Writs in the Register framed upon such Certificate made by any Visitor or Abbot of any other House, upon which the Party who left his Habit was not remaining at the Time, and therefore *Quere* of the same.

Writ de Leproso amovendo.

THE *Writ de Leproso amovendo* lieth, where a Man is a Lazar or a Leper, D and is dwelling in any Town, and he will come into the Church, or amongst his Neighbours where they are assembled, to talk with them, to their Annoyance and Disturbance; then he or they may sue forth that Writ for to remove him from their Company; and the Writ is such:

The King to the Sheriff, &c. or to the Mayor and Sheriffs of London, greeting: E Because we have received Information that I. of N. is a Leper, and is commonly conversant amongst the Men of the City aforesaid, and hath Communication with them as well in publick as in private Places; and refuses to remove himself to a solitary Place, as the Custom is, and to him belongs to do, to the great Damage of the Men aforesaid, and manifest Peril by reason of the Contagion of the Disease aforesaid; We being willing to take Precaution against such Danger, as to us appertains, and that that which is just and hath been used, be done touching the Premises, command you, that taking with you certain discreet and lawful Men of the City aforesaid, not suspected, who have the best Knowledge of the Person of the said I. of N. and of such Disease, you go to him the said I. and cause him to be seen and diligently examined in the Presence of the said Men, and if you shall find him to be a Leper, as before is said, then without Delay, in the best Manner you can, cause him to be carried away, and removed from the Communication of the said Men, to a solitary Place, to dwell there, as the Custom is, lest by such his common Conversation, Damage or Peril should in any wise happen to the said Men. Witness, &c.

And upon that he may have an *Alias* and a *Pluries*, and Attachment against F the Mayor, or against him to whom the Writ is directed, if he will not execute the Writ.

But it seemeth, if a Man be a Leper or a Lazar, and will keep himself G within his House, and will not converse with his Neighbours, that then he shall not be moved out of his House. But there are divers Manners of Lepers; but it seemeth that the Writ is for those Lepers who appear to the Sight of all Men that they are Lepers by their Voice, and their Sores, and the Putrefaction of their Flesh, and by the Smell of them: But for those who are infected with that Disease in their Bodies, and it doth not appear outwardly upon their Bodies, *Quere*, whether such Writ lieth for to remove them.

Writ De deonerando pro rata portione.

H **T**HE Writ *De deonerando pro rata portione* lieth, where a Man holdeth ten Plow. 125.
Oxgangs of Lands by Fealty, and twenty Shillings Rent of the King, and the Tenant doth alien one Part, or one Oxgang, to one Man, and another Oxgang to another Man in Fee, and so to others the rest of the Oxgangs, and the Sheriff or the King's Officer will distrain one of the said Tenants for the whole Rent; then he who is distrained may sue forth that Writ, which is thus:

The King to the Sheriff, &c. greeting: I. A. and W. have shewed unto us, that whereas four Oxgangs of Land with the Appurtenances in E. which were B.'s and which are holden of us by the Service of thirteen Shillings by the Year, to be rendred by the Hands of our Sheriff of the County aforesaid for the time being, are come to the Hands of the said I. A. and W. and also to the Hands of T. by their Purchase; and although they the said I. A. and W. only hold two Oxgangs of Land thereof, you nevertheless exact the said yearly thirteen Shillings of the said I. A. and W. omitting the said T. who holds the other two Oxgangs of Land, and compel them the said I. A. and W. by various Distresses, to render to us the said yearly thirteen Shillings, to the great Expence and Grievance of them the said I. A. and W. whereupon they have besought us to apply a fit Remedy for them: And because we will not that the said I. A. and W. be injured in this Matter, we command you, that if upon Inquest upon the Premisses to be made, or by other lawful Means it shall appear to you, that the aforesaid four Oxgangs of Land are held of us by the Service of thirteen Shillings only, and that they the said I. A. and W. hold two Oxgangs of Land thereof, and the said T. the other two Oxgangs of Land, the Residue, as it is said, then having received of the said I. A. and W. these Services which to us belong, for the proportionate Share of their holding, which they hold thereof, you permit them to be quiet of the rest of the Service: Provided always, that the said Residue of that Service be levied upon the said T. to our Use, as is just. Witness, &c. [235.]

A And it appeareth by that Writ, that notwithstanding the Statute of *Quia emptores terrarum*, that if the King's Tenant do alien Part of the Lands held of the King, yet the King or his Minister may distrain one of the Tenants for the whole Rent, &c. although that the Statute saith, *quod feoffatus teneat pro particula illa, &c.* But it seemeth that the King is not bound by the Statute, but a common Person is. For if a Man hold twenty Acres of Land by Fealty, and twenty Shillings Rent of another Man, and he alieneth one Acre to one in Fee, and another Acre to another in Fee, the Lord shall not distrain the Alienee but for the Rate and Value of the Land which he hath purchased, and shall not distrain one Alienee for the whole Rent, &c. But if the King's Tenant doth alien Part of the Lands which he holdeth of the King without Licence, then the King may chuse whether he will take the Alienee for his Tenant, or not; and then it is a Question whether the Alienee shall have such Writ: But if the Alienee doth pay a Fine to the King for the Alienation, it is Reason that he have such Writ as before, if he be distrained for the whole Rent which issueth out of all the Lands, whereof he hath purchased but Part, &c. Br. Appar. count 21. Dyer 240. a. 29 H. 8. f. 28. Perkins 129. 27 H. 8. 25. con.

And the like Writ as before is awarded to the Queen's Officers, where they distrain one Tenant for the whole Rent, where he holdeth but Part of the Lands, and several other Tenants hold the Residue thereof.

Br. Appar.
count 21.
Plow. 125. b.

29 H. 8. f. 28.

And if a Man who holdeth one hundred Acres of Land, ought by his Tenure thereof to repair such Bridge, if he alien in Fee twenty Acres to one, and twenty Acres to another, and one of them only be distrained to make the Reparations upon a Presentment found; he shall have a special Writ to the King's Officers, that they do not distrain him, but according to the Rate of his Proportion of the Land which he holdeth; and the Writ is such:

The King to his beloved and faithful I. of T. and his Companions our Justices, assigned to inquire of the Defects of the great Bridge of C. and to cause those Defects to be repaired and amended, greeting: It is shewed to us on the Behalf of R. grievously complaining, that whereas it is presented before you, that the same R. holds four Hides of Land with the Appurtenances in D. in the County aforesaid, which have been anciently accustomed to be charged towards the Reparation of the said Bridge: Or thus, Which are asserted to be bound to the Reparation of the said Bridge, and although he only holds twenty Acres of Land of the said four Hides of Land, and certain others hold all the Residue of the said four Hides; Nevertheless you, by reason of the Presentment aforesaid, endeavour to levy seven Pounds (at which Sum the said four Hides of Land are apportioned, for the Reparation of the said Bridge,) upon the said R. as if he wholly held the four Hides of Land aforesaid, whereas he does not hold the same, omitting the other Tenants aforesaid, and cause him upon that Occasion to be grievously distrained and much disquieted, to the great Damage of him the said R. and the manifest Oppression of his Estate; whereupon he hath besought us to provide him a Remedy; And because we will not have him the said R. to be unduly charged in this Matter, we command you, that if by Inquest to be taken thereon, in the Presence of him the said R. if he will be present, or by other lawful Means it shall appear to you, that he the said R. holds but twenty Acres of the said four Hides of Land only, and the Rest of the same four Hides of Land are in the Hands of other Tenants, as it is said, then cause to be levied the said seven Pounds, at which the said four Hides of Land are so assessed, for the Reparation of the Bridge aforesaid, as well of the said R. as of the said other Tenants, to wit, of every one of them according to the Proportion of his Holding of the said four Hides of Land, sparing no Body in this Matter, nor charging any Tenant of the same unduly beyond the Proportion of his Holding, notwithstanding the said Presentment. And if any thing be levied of the said R. unjustly beyond the Proportion of his Holding, cause it to be restored to him without Delay. Witness, &c.

21amf Prærog.
22.

There is another Form of Writ for the King's Tenant, where he is distrained for all the Rent, where he holdeth but Part of the Lands out of which the Rent ought to be paid; which see in the Register.

But look the Statute of 34 Ed. 3. cap. 15. That if the King's Tenant in Capite alieneth his Lands in Fee without Licence, the Alienation shall not bind the King, but that he shall have his Prerogative of those Lands and Tenements; and therefore *quære* the Meaning of that Statute, and what is intended thereby.

Writ of Superfedeads.

A **T**HE Writ of *Superfedeads* lieth in divers Cafes: As if a Man be fued, and [236.]
 a *Capias* or *Exigent* be awarded againft him, he may by his Friend fue
 forth a *Superfedeads* out of the Place where the *Capias* or *Exigent* was awarded
 againft him; or out of the Term he may fue forth a *Superfedeads* out of the
 Chancery directed to the Sheriff, that he take Sureties of him, &c. to appear
 at the Day, &c. and that he let him at Liberty; or he may find Sureties in
 the Chancery to appear at the Day of the Return of the *Capias* or *Exigent*;
 and upon this he fhall have a *Superfedeads* to the Sheriff, that he let him go, if
 he have arrefted him thereupon; and if he have not arrefted him, that then
 he do not arreft him, but fuffer him to go in Peace; and the Form of the
 Writ is fuch:

The King to the Sheriff, &c. Whereas A. impleads before us by our Writ, B. and certain others contained in our said Writ, of a certain Trespass to him the said A. by the aforefaid B. and the others aforefaid committed, as it is faid, and the fame B. because he came not before us to answer the said A. of the Trespass aforefaid, is put in Exigent in your County to be outlawed, he being wholly ignorant of the Exigent aforefaid; whereupon he hath befought us, that whereas he is ready upon the Premiffes in all Things to stand to Right, we would affift him in this Matter, we regarding the Supplication aforefaid, as far as it fhall be juft, command you, that if the faid B. coming Personally in your County, fhall render himfelf to our Prifon as the Custom is, then Superfede the Exigent aforefaid; and afterwards if the faid B. fhall find you fufficient Bail, who fhall be Bail to have him before us at fuch a Day, whereon our said Writ of Exigent is returnable before us, to answer the said A. of the Trespass aforefaid, and further to do and receive that which our Court fhall confider in the Premiffes, then in the mean time caufe the said B. to be delivered out of the said Prifon (if he be detained in the fame upon that and no other Occafion) by the Bail aforefaid: And have there the Names of the Bail and this Writ, &c.

And when he findeth Sureties in the Chancery for to appear at the Day of the Return of the *Exigent*, then he fhall have a *Superfedeads* of another Form; which fhall be fuch:

The King to the Sheriff, &c. C. hath befought us, That whereas B. impleads before us by our Writ, the faid C. and certain others of a certain Trespass to the faid B. by the faid C. and the others aforefaid committed, as it is faid, and although the fame C. is ready to answer the faid B. of the Trespass aforefaid, (if any there was,) and in all Things to stand to Right, according to the Law and Custom of our Realm of England, yet, because you have returned before us, that the faid C. was not found in your Bailiwick according to the Procefs thereof before us had, he is put in Exigent by you in your County to be outlawed, that we would provide for his Indemnity in this Behalf: We, because that W. R. and I. have become Bail before us in our Chancery to have the faid C. before us at the Day whereon our Writ of Exigent againft him the faid C. is returnable, to answer the faid B. of the Trespass aforefaid, being willing the faid C. &c. if he is put

Writ of Superfedeas.

in *Exigent* aforesaid, by Occasion of the Premises and no other, as is said, then in the mean Time supersede doing any thing further in that *Exigent*, by the Bail aforesaid; and have there then this Writ. *Witness*, &c.

And if the Clerk, who hath the Keeping of the Rolls for the Taking of Statute-Merchants, forge a Bond in the Name of another, and putteth the Mayor's Seal, and a Seal in the Name of the Party, to the same, and makes an Enrolment thereof in the Rolls, and afterwards doth certify the same into the Chancery, for which a *Capias* is awarded against the Party; then he against whom such Procefs is sued forth may come into the Chancery, and have a Writ directed unto the Sheriff, relating therein the whole Matter, and reciting that the Party hath upon the Matter sued forth an *Audita Querela*, directed to the Justices of the King's Bench, commanding them to call the Parties before them, &c. and commanding the Sheriff, that if the Party who is sued will find sufficient Sureties to the Sheriff, to appear at the Day in the King's Bench, and to pay the Debt, if he be condemned, that then he do surcease to arrest or to trouble him, &c.

And if a Man do cite another by the Pope's Bull personally to appear at the Court of *Rome*, &c. against the Statutes; now if he who made the Citation be committed to Prison, he may sue in the Chancery to have a special Writ directed unto the Sheriff, rehearsing the Matter, commanding him, that if the Parties will find sufficient Sureties, Body for Body, to appear before the King and his Council at a certain Day, and perform what the Court shall adjudge or be decreed for the King or Council, that then he let him at large: And by that Writ the Sheriff ought to set him at Liberty; and if he will not, he shall have an *Alias* and a *Pluries*, and Attachment against him.

If a Man depart from his Master without sufficient Cause, and another knowing the same, doth retain him, for which the Master bringeth a Writ against him for the retaining of his Servant, upon which a *Capias* is awarded, he may in the Chancery find Sureties to appear *in Banco* at the Return of the Writ, and have a *Superfedeas* thereupon to the Sheriff, not to arrest him: and if he have arrested him, to set him at Liberty.

[237.] And the like Writ and *Superfedeas* shall be awarded out of the Chancery; if the Action be brought against the Servant for his Departure, and a *Capias* awarded, &c. he may find Sureties in the Chancery for to appear at the Day, and have a *Superfedeas* to the Sheriff, that he do surcease to arrest him, &c.

And if a Man be sued in the Common Pleas in Debt, or in Trespass for Damages, and a *Capias* or *Exigent* is awarded, if the Debtor do find Sureties in Chancery to appear before the Justices at the Day of the Return of the Writ, and to stand right according to Law, he shall have a *Superfedeas* to the Sheriff not to arrest him; and if (a) he hath arrested him, to set him at large. But it seemeth, that upon a *Capias* or *Exigent' ad satisfaciendum*, the Sheriff ought not to let the Party at Liberty after he hath taken him by

(a) Note: If he be taken before the *Superfedeas* purclafed, the *Superfedeas* is not to the Purpose: But if he comes in by *Cepi corpus*, there

shall not be an Attachment, 11 H. 6. 32. 19 H. 6. 43. accordant, where he was taken before the *Superfedeas* delivered.

Force of the Writ (a), because he is in Execution for the Party, &c. And so upon an *Exigent* awarded in a Writ of Account, he may sue forth such *Superfedeas*.

B And so if a Man doth become Surety for another, to pay a Fine in the Common Pleas or King's Bench, and the Fine is not paid, &c. for which Cause, Process of Utlagary is awarded against the Surety, &c. at the *Exigent* awarded against the Surety, he may sue forth a *Superfedeas*, and find Sureties in the Chancery to appear at the Day, and to stand right to the Law; and thereupon he shall have a *Superfedeas* to the Sheriff, that he do not arrest his Surety, and if he hath arrested him, that he let him at Liberty.

And it seemeth reasonable that such Writ shall be granted (b), because the Fine is a Duty to the King, and the King may respite the same if he please; but if an *Exigent* be awarded upon a Judgment at the Suit of the Party, such *Superfedeas* is not allowable.

C If a Man be indicted before Justices of the Peace, and put in *Exigent*, he may find Sureties in the Chancery to appear at the Day of the Return of the Process awarded by the Justices of Peace, and thereupon have a *Superfedeas* to the Sheriff not to arrest him, and if he have arrested him, to set him at Liberty; and that Surety shall be Body for Body, &c.

D If a Man be put in *Exigent*, at the Suit of another in several personal Actions, he may find Sureties in Chancery Body for Body, to appear to every Action at the Return of the Writs; and thereupon he shall have a *Superfedeas* to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the Days, &c. commanding him not to arrest him, &c. And the Forms of the Writs of the *Superfedeas* are in divers Manners.

E And if a Man be indicted before Justices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the Indictment is removed by *Certiorari*; the Party out of the Chancery may sue forth a *Superfedeas* to the Sheriff not to arrest him, &c. because the Indictment is removed by *Certiorari*, &c. or the Justices of Peace *ex Officio* ought for to award a *Superfedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment, as it seemeth: *Tamen quere.* And in such Case he may have a *Superfedeas* out of the Chancery directed to the Sheriff, commanding him, that if the Party will yield himself to the Sheriff, and find Sureties to appear at the Day of the Return of the Writ, that then the Sheriff do not arrest him, &c.

If a Man sueth a Knight of St. *John's* of *Jerusalem*, and other by their proper Names, and not by the Name of Knight of St. *John's*, &c. and he be sued to the *Exigent*, the *Superfedeas* shall be purchased in the Name of the Prior, and of the said Knight his *Confrater*, in the Chancery, and there they may find Sureties to appear at the Day; and thereupon they shall have a *Superfedeas* to the Sheriff, that he do not arrest him, &c.

(a) Nor ought the Sheriff to surcease from taking him. 18 H. 6. 19. 2 H. 7. 12, 19.

(b) For if a *Mandamus* comes to the Escheator at the Suit of the Heir; the Escheator ought not

to surcease, by Reason of the *Superfedeas*. *Dyer* 170. in *Case hæredis Domini Powis*. See 4 H. 7. 16. held so by *Fairfax* in a *Diem clausit extremum*.

Writ of Superfedeas.

If a Man be condemned in Debt or Trespafs by false Verdict, and a *Capias* F be awarded to arrest the Party, now if the Party sueth an Attaint, he may come into the Chancery, and there find Sureties that he shall appear at the Day, &c. and will answer the Party, and satisfy the King and the Party what belongeth to them, if the Attaint doth pass against him; and upon the same he may have a *Superfedeas* to the Sheriff, that he do not arrest him; and the Form of the Writ is such:

(a) *The King to the Sheriff, &c. A. hath shewed unto us, That whereas B. G lately impleaded in our Court before our Justices lately Itinerant in the said County, the aforesaid A. and certain others of a certain Trespafs, to the same B. by the aforesaid A. &c. committed, as it was said, of which said Trespafs the same A. by the Inquest (upon which he put himself before the said Justices) was convicted, by which the said A. is now in Prison, to remain therein, until we shall be satisfied of that which to us appertains, in this Behalf, and the said B. of the Damages adjudged to him; and now the said A. hath arraigned by our Writ returnable before us, &c. wheresoever, &c. a certain Jury of twenty-four Knights to attaint the Jurors of the Inquest aforesaid, and hath besought us, that pending the Jury aforesaid so before us, we would cause him the said A. to be delivered out of the Prison wherein he is so detained, so that he may be able to prosecute the same according to the Law, &c. We willing to assist the aforesaid A. in the Premises, &c. and because that the same A. hath found before us in our Chancery certain Bail, to wit, A. and B. of your County, who have become Bail, &c. every of them, to satisfy as well to us of that which to us belongs, as the aforesaid B. of his Damages (as is before said) adjudged, if the Jury aforesaid shall pass against him, or the said A. shall not prosecute the same, do command you, that without* [238.] *Delay you cause him the said A. to be delivered out of the Prison aforesaid, if he be detained in the same upon that, and no other Occasion, by the Bail aforesaid, so that he may be able to prosecute the said Jury, as he ought; and have before the said Justices at the said Day this Writ. Witness, &c.*

If a Man be condemned in Trespafs, and the Plaintiff prayeth an *Elegit*, A and a *Capias* is awarded against the Party for the King's Fine, the King may grant a *Superfedeas* directed to the Sheriff, that he do not arrest the Defendant upon the *Capias*, because that the Plaintiff hath made his Election to have his Execution by *Elegit*.

And if in Trespafs the Defendant do agree with the Plaintiff pendant the B Suit, he shall have a *Superfedeas* to the Sheriff, that he do not execute the Process sued forth against him; but then it seemeth the same Agreement ought for to appear upon Record in the Court, &c.

If a Man be condemned in Trespafs, and the Defendant doth bring an Attaint, C and the Plaintiff sue an Execution by *Elegit*, and a *Capias* is awarded against the Defendant for the King's Fine; the Defendant in Chancery may sue a *Superfedeas* of the *Capias*, reciting in the Writ how that the Defendant hath brought an Attaint, and that the Plaintiff hath sued forth an *Elegit*, commanding the Sheriff to whom the *Superfedeas* is directed, that if the

(a) But Note; The Writ of Attaint is not a *Superfedeas*, nor shall any *Superfedeas* at all be granted in Attaint. *Dyer* 61.

Defendant do yield himself to Prison, and there find Sureties to the Sheriff to satisfy the King for what doth belong to him, &c. that then he do deliver him out of Prison upon that Security, if he conceive the same to be sufficient Security.

D If a Man sueth a Writ *de uxore abducta cum bonis viri*, and a *Capias* or *Exigent* be awarded thereupon, the Defendant may find Sureties in the Chancery, Body for Body, to appear at the Day; and upon the same he shall have a *Superfedeas* to the Sheriff, to set him at Liberty, if he have arrested him. And so upon an Appeal of Rape, if the Defendant in Chancery find Sureties, Body for Body, to appear at the Return of the Writ, and to stand to the Law, he shall have a *Superfedeas* to the Sheriff to set him at Liberty, &c. Post. 251. B.

E And so if a Writ be granted out of the Chancery to attach one to find Sureties of Peace for a Menace to another, he may put in Security in Chancery by Surety to keep the Peace, and thereupon have a *Superfedeas* to the Sheriff, reciting the Matter, commanding him to set him at Liberty, if he have arrested him.

If a Man sueth a *Supplicavit* out of the Chancery, to arrest a Man to find Sureties of Peace, the Defendant who is arrested may have a *Superfedeas* in Chancery to the Sheriff, commanding him not to arrest him; and the Writ shall be such:

The King, &c. greeting: Although lately upon the Prayer of M. suggesting to us that I. had grievously threatened the said M. touching his Life and the Mutilation of his Member, we commanded you by our Writ, that you should cause him the said I. to come personally before you, and compel him to find sufficient Bail, that he the said I. under a certain Pain to be reasonably imposed upon him by you, for which you would answer to be Bail, that he would not bring upon the same M. or procure to be brought on him, any Damage or Ill; and if he should refuse to do this before you, then you should take him, and cause him to be kept safely in our Prison of N. until he should find Security in Form aforesaid: Yet because R. and S. &c. personally appearing before us in our Chancery, have become Bail for the aforesaid I. that he should not bring, nor procure to be brought, any Damage or Ill to the same M. of his Body, to wit, each of them under the Pain of twenty Pounds, which they granted to be levied of their Lands and Chattels to our Use, if he the said I. should bring or procure to be brought any Damage to him the said M. or his Body: We command you, that you supersede the Execution of our said Writ to you in this Behalf directed, by the Bail aforesaid, &c. Witness, &c.

And if the Justices of Peace do award a Precept or a Warrant against a Man to find Sureties for the Peace, he against whom the Warrant is, may find Sureties in the Chancery for to keep the Peace, &c. and upon the same have a *Superfedeas* to the Justices of the Peace, that they do surcease, &c. to arrest him, &c. and thereupon the Justices ought to surcease to make any Warrant against him afterwards; and if they have made any, that they ought so award a *Superfedeas* to the Sheriff, commanding him to surcease; and the Writ directed to the Justices of the Peace is such:

Writ of Superfedeas.

The King to his beloved and faithful his Justices assigned to keep the Peace in the County of Berks, greeting, &c. W. hath besought us, that whereas he is afraid that upon the Prosecution of T. he shall be taken and arrested and grievously imprisoned by you, until he shall find Security that he the said W. will not do nor procure to be done, any Damage or Ill to him the said T. of his Body, we would command the Caption and Arrest aforesaid, to be superseded by sufficient Bail: We, because that R. S. P. and F. of the County of W. in our Chancery personally appointed, have become Bail for him the said W. that he shall not do, nor procure to be done, any Damage or Ill to the same T. of his Body, to wit, every one of them under the Pain of one hundred Pounds, which they have granted to be levied upon their Goods and Chattels to our Use, in Case that any Damage or Ill happen to the same T. of his Body, by the said W. or his Procurement, regarding the Prayer aforesaid, command you, that you wholly supersede by the Bail aforesaid, the Caption and Arrest of the Body of the said W. to be made on that Occasion, &c. Witness, &c.

[239.] And if the Wife be in Fear or Doubt of her Husband that he will beat her or kill her, &c. she may sue a *Supplicavit* in Chancery against her Husband, to find Sureties that he do not beat her, nor evil intreat her, and for to govern rule, and chastise her reasonably; and the Writ is such:

The King to the Sheriff, &c. R. the Wife of I. B. hath besought us, that whereas she of her Life, &c. is grievously and manifestly threatened by the said I. B. we would provide for the Safety of her the said R. in this Behalf; We regarding the Prayer aforesaid, command you, firmly injoining, that you cause him the said I. B. to come personally before you, and by all means compel him to find sufficient Bail, &c. (as above) that he will well and honestly treat and govern the aforesaid R. and that he will not do, nor procure to be done, any Damage or Ill to her the said R. of her Body, otherwise than lawfully and reasonably belongs to her Husband, for the Cause of Government and Chastisement of his Wife. And if this before you, &c.

And if a Man in Court-Baron in a Writ of Right, or in other Court, as in *A London*, in a Writ of Right, vouch a Foreigner to Warranty, &c. the Tenant who voucheth may sue forth a *Superfedeas* directed to the Court, commanding them that they do not proceed in the Plea, until the Warranty be determined, &c. *quod vide* in the Register, fol. 5. 11. & 13. And upon the same he may have an *Alias*, and a *Pluries* and an Attachment, against the Bailiffs, or Mayor of *London* and Sheriff, if they will not surcease, &c.

And if a Man such a Prohibition to the Spiritual Court and to the Parson, *B* and notwithstanding the Spiritual Judge doth proceed to excommunicate the Party, and upon Certificate thereof in the Chancery a Writ of *Excommunicato capiendo* is awarded; he who sued the Prohibition shall have a *Superfedeas* to the Sheriff, reciting the whole Matter, commanding him that he do not arrest the Party; and if he have arrested him, that he deliver him: *Quod vide* in the Register, fol. 67. And he may have a *Superfedeas* out of that Court out of which the Prohibition did issue, &c.

If the Collectors of the Subsidy or Tenths granted by the Clergy are excommenced by the Ordinary for their Contumacy, &c. and that be certified, and thereupon a Writ directed to the Sheriff for to arrest them, if it be testified in the Chancery afterwards by the Sovereign of the Collectors, that they have satisfied and submitted themselves; then upon that a *Superfedeas* shall be directed to surcease to arrest them; and if he hath arrested them, that he deliver them.

And if the Bishop do certify an Excommunication into the Chancery against one for a Contempt in a Suit depending before him, and thereupon a Writ of *Excommunicato capiendo* be awarded; if the Official do by his Letters after certify in Chancery, that the Defendant hath appealed to Rome, or elsewhere: Now upon that Certificate he shall have a *Superfedeas* to the Sheriff, that he do not arrest him pendent the Appeal; and if he have arrested him, that then he do deliver him, &c.

And so if he who is excommunicate sheweth in Chancery the Pope's Letters, testifying that he hath appealed, &c. he shall have a *Superfedeas* to the Sheriff commanding him for to surcease, &c. and if he hath taken him by Force of the Writ of *Excommunicato capiendo*, that then he do deliver him; *quod vide Regist. fol. 68.*

- C If a Man take one as his Villain, and the other sueth a Writ *de Homine replegiando*, and he claimeth him as his Villain; he who is taken may put in Sureties in Chancery to yield himself and his Goods, if, &c. and thereupon he shall have a *Superfedeas* directed to him who took him, not to take him; and if he hath taken him, that then he do deliver him. *Regist. 79, 80.*
- D If a Man do hold Plea in the County of a Trespass which is *Vi & armis*, *Finch. 306.* &c. the Defendant may sue out of the Chancery a *Superfedeas* unto the Sheriff or to the Bailiffs of the Hundred where the Plea is holden, reciting that a Plea of Trespass *Vi & armis* shall not be holden in a less Court than before the King, or other Justices by his Commandment. *Regist. fol. 111.*
- E And upon a Writ of Error brought of a Judgment given in London or other Court, the Party shall have a *Superfedeas* directed to the Mayor and Sheriffs, or other Officer, to surcease to award Execution. *Regist. fol. 129.*
- F If a Man be distrained by a Process which issues out of the Exchequer, as Executor to an Accountant there, he may have a *Superfedeas* out of the Chancery directed to the Treasurer and Barons of the Exchequer, surmising that he is not Executor nor Surety for the Accountant, &c. commanding them that they do surcease, until they have inquired the Truth thereof.
- G And the like Writ is given where the Barons do award Process of Distress against any one who hath not any of the Lands of him who was the Accountant, &c. but of his Purchase before he was Accountant; *quod vide Regist. 144.*
- H And if the Sheriff doth hold Plea of forty Shillings, the Defendant may sue forth a *Superfedeas*, that he do not proceed, &c. or after Judgment he may sue a *Superfedeas* directed to the Sheriff, commanding him not to award Execution upon such Judgment; and upon that an *Alias*, a *Pluries* and an Attachment. *Regist. 145. 41 Ed. 3. Brief 55. con. in C. B.*

43. Ed. 3. 21.
and 19 H. 6. 8.
con.

Writ De procedendo ad Judicium.

If a Man for Debt of ten Pounds sue in the County by divers Plaints there, every Plaintiff under the Sum of forty Shillings, where the Debt is one intire Debt, the Defendant may sue a *Superfedeas* to the Sheriff, commanding him not to hold Plea in those Plaints.

If a Man sue one in the County before the Sheriff for Breach of Covenants, to his Damage of ten Pounds, or above the Sum of forty Shillings, then the Defendant may sue a *Superfedeas* to the Sheriff that he do surcease; *quod vide Regist.* 146.

[240.] And if a Man do sue forth an *Audita Querela* to avoid a Statute-staple or A a Statute-merchant, he shall have a *Superfedeas* to the Sheriff not to do Execution hanging the Plea, &c. *Regist.* 113.

Note, That the Constable of *Dover*, who is Warden of the Cinque Ports, B cannot hold Plea of a Thing which doth belong to be determined in the County, if it be not of a Thing concerning the Keeping of the Castle of *Dover*; and if he do, the Party shall have a Writ directed unto him to surcease, and upon the same an *Alias* and a *Pluries*, and an Attachment; and the Writ shall be such:

The King to his beloved and faithful B. Constable of his Castle of Dover and Keeper of his Cinque Ports, or to his Lieutenant, greeting: Whereas amongst other Articles which Lord Edward some time King of England, our Grandfather, granted for the Amendment of the People of his Realm, it is ordained, that the Constable of the Castle of Dover shall not hold Plea at the Gate of the said Castle of any foreign Plea of the County, that doth not touch the Custody of the same Castle; and you a certain Plea between W. of C. and P. of a certain Debt which the same W. requires of the said P. (and which said Plea doth not concern the Custody of the said Castle) held before you at the Gate of the Castle, and unjustly disquiet him the said P. on that Occasion by various Distresses, against the Tenor of the Articles aforesaid, as on the Behalf of the said P. we are given to understand: We willing that the said Articles be inviolably observed, command you, if it is so, that then you wholly surcease from further holding that Plea before you, and that you do not molest nor in any wise aggrieve him the said P. against the Tenor of the said Articles; and the Distress, if any, &c.

And if the Constable doth hold Plea of any Thing of which he ought not C for to hold Plea, the Party shall have his Action upon the Statute, although he doth not sue forth any Writ before directed to the Constable.

Writ De procedendo ad Judicium.

Ant. 152. D. **N**OTE, That by the Statute made *Anno 2 Ed. 3. cap. 8.* it is enacted, That Commandment be not either by the Great Seal nor the Petty Seal to delay common Right; but if such Commandments come, &c. that the Justices shall not surcease to do Right in any Point.

And by the Statute made *Anno 14 Ed. 3. cap. 14.* the Justices shall not surcease for the Great Seal or Lesser Seal.

And

And by that it appeareth, that the King's Justices shall proceed according to Law, notwithstanding the King's Commandments directed and delivered to them: And if the Party thinketh in his Conscience, that such Commandments shall be made, then he may sue forth a Writ upon that Statute, commanding them to proceed, notwithstanding such Commandments; and the Writ shall be such:

The King to his beloved and faithful W. &c. and his Companions, Justices assigned to take the Assises in the County of Salop, greeting: Whereas in our Parliament at Northampton called in the second Year of our Reign, it was agreed and ordained by us, the Prelates, Earls, Barons and other great Men, and the whole Commons of our Realm being in the same Parliament, that it should not be commanded by our Great Seal nor by our Little Seal, to hinder or prorogue the Common Law, and if such Commands should come, that the Justices for that Cause should not surcease to do Justice, as in the said Statute it is more fully contained: We command you, that you in no wise surcease to do Justice to the Parties in an Assise of Novel Disseisin, which T. hath arraigned before you by our Writ against A. and I. his Wife, and others in our original Writ contained, of Tenements in E. by virtue of any Command of the Great Seal or Little Seal to you directed or to be directed, against the Tenor of the Statute aforesaid. Witnesses, &c.

But it seemeth to be in vain to sue forth such Writ, if the Justices do consider their Oath, and their Duty to God and the King: But because some Justices are fearful, and will not do a Thing which may turn to their Displeasure, that Writ was ordained, as it seemeth, and for no other Cause, for the Statute was sufficient in itself; and the Party may have in the End of the Writ these Words, viz.

But proceed to the taking of the same Assise as of Right ought to be done, according to the Law and Custom of our Realm of England. Witnesses, &c. Br.Ni.pri.3.

E And by the Statute of *Westm.* 2. upon Issues joined in the Common Pleas or King's Bench, they shall be tried by *Nisi prius* before the same Justices in the Country. And by the Statute of Fines, in the Time of Vacation those Issues shall be tried before one of those Justices, associating to him a Knight, &c.

And by the Statute of *York*, a Justice of Assise associating to him an honest Man shall take *Nisi prius*, and try the Issues arising thereupon taken in the Common Pleas or King's Bench, if they need not great Examination, &c. But in those Cases it appeareth by the Register, the King by his Writ may restrain and command the Justices, that they do not award *Nisi prius*; and if they have awarded any Writ of *Nisi prius*, that they send a *Superfedeas*; and the Writ shall be such:

The King to his Justices of the Bench, greeting: Although by the Common Council of our Realm it is agreed and appointed, that Inquests and Juries to be taken in Pleas of Land, which are not of great Examination, shall be taken in the Country before a Justice of the Place where the Plea is, having associated to him some honest Man of the Country, Knight or other, so that a common Day be given in the Bench, and a certain Day and Place in the Country, in the Presence of the Parties; and also that Inquests and Juries in Pleas of Land that require great Examination, shall be taken before two Justices of the Bench in Form aforesaid; nevertheless the Plea which is before you in the Bench aforesaid by our Writ be-

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tween W. Demandant, and T. Tenant of the Manor of S. with the Appurtenances in the County of W. especially concerns us, more especially seeing that the said T. holds the said Manor for the Term of his Life of our Grant, and after the Death of the same T. the said Manor ought wholly to revert to us and our Heirs; We willing to take care of our Indemnity in this Behalf, command you, that if you happen to proceed to take the Inquest thereupon, then that you take such Inquest before us in the Bench aforesaid, and not elsewhere, the Concord and Statute aforesaid notwithstanding; and if you shall have demanded the Inquest thereof to be taken by our Writ of *Nisi prius*, then you shall demand the taking of that Inquest in the Country to be superseded. *Witness, &c.*

There is another Form of Writ for that Matter in the Register. And *M. 32 H. 6.* it appeareth, that it is in the Justices Discretion, whether they will grant *Nisi prius*, or not; and by the like Reason, the King at his Discretion, and by his Writ directed to the Justices, may restrain the same.

And *Nisi prius* shall not be granted where the King is Party, without the King's special Warrant, or the King's Attorney's Assent, notwithstanding the aforesaid Statutes.

Stamf. 156.
Br. Ni. pri. 35.
Procedend. 14.

Writ upon the Statute made for the King's Steward and Marshal, that they do not hold Plea, if not, &c.

10 H. 7. 13. SEE by the Statute of *Articuli super Chartas, cap. 3.* (a) That the Steward and Marshal shall not hold Plea of Freehold, nor any Plea of Trespass, but only of Trespass done in the King's House, and other Trespasses done within the Verge, and of Contracts and Covenants which some of the King's Household ought to have against another of his Household, and no other; and no Plea of Trespass shall proceed, which is not brought before the King remove out of the Verge where the Trespass shall be done, so as that they be ended before the King go out of the Bounds of the Verge where the Trespass is done; and if they cannot be ended there, the Parties shall cease, and shall be tried at the Common Law. And the Steward shall not take Cognizance of the Debts of other Men, but only of such as be of the King's House: He shall hold no other Plea by Obligation made at the Distress of the Steward or Marshal; and if they do contrary to that Ordinance, it shall be void. And the Court of the Marshallage, nor the Jurisdiction thereof, shall not exceed above twelve Miles by the Statute made 13 R. 2. c. 3. And a Man may add in Action brought against him in the Court of the Steward or Marshal, that he was not of the King's Household at the Time of the Trespass or Contract made, or that the Plaintiff was not one of the King's Household at that Time.

(a) See 10 H. 6. 13. In Trespass brought there; of a Trespass done within the Verge, it is necessary that one of the Parties be of the Household, &c. as well as in Contracts, &c. for else an Action is maintainable on the Statute. *Nul tiel Record* a good Plea there. 7 H. 6. 30.

C And if a Man be sued in the Court of the Steward and Marshal contrary to the Statute, then he who is grieved shall have such Writ (a):

The King to the Steward and Marshal of his Household, greeting: Whereas amongst other Articles which Lord Edward some time King of England, our Grandfather, granted for the Amendment of the State of his People, it is ordained that the Steward and Marshal of our Household shall not hold Plea of Freehold, of Debt, Covenant, Trespass, or of Contract made between the King's People, but only of Trespasses done within the House, and of other Trespasses done within the Verge, and of Contracts and Covenants that any of the King's House shall have made with others of the same House and in the same House, and not elsewhere; and now from the Complaint of A. and B. we have received Information that you, at the Prosecution of I. of L. hold before you a Plea between the aforesaid A. and I. (who are not of the same House, as it is said) of a certain Debt which the same A. demands of the said I. to the great Damage and Grievance of him the said A. and against the Form of the Ordinance aforesaid; We therefore being willing that the said Ordinance be observed in all and every its Articles, command you, if so it is, that then you wholly surcease from farther holding that Plea before you, not molesting or in any wise aggrieving him the said A. against the Tenor of the Ordinance aforesaid; and the Distress, if any, &c. Witness, &c.

D And if the Plea be lawfully begun before the Steward and Marshal of the King's House within the Verge, and before the Plea be ended the King doth remove; now the Plea is thereby discontinued, and then it behoveth the Party to commence his Action at the Common Law, and not within the Verge before the Steward and Marshal; and if he do, the Party grieved shall have such Writ:

The King to the Steward and Marshal of his Household, greeting: Whereas amongst other Articles which Lord Edward some time King of England, our Grandfather, granted for the Amendment of the State of his People, it is ordained that the Steward and Marshal of our Household shall not hold Plea of Freehold, of Debt, of Covenant or Contract of the Men of the People, but only of Trespasses of our Household and other Trespasses done within the Verge, and of Contracts and Covenants which any of the said Household shall make with another of the same Household and in the same House, and not elsewhere; and they shall plead no other Plea of Trespass that is not attached by them before we depart from the Verge where the Trespass was committed, and shall plead and determine those Pleas speedily, from Day to Day, so that they may be pleaded and determined before we depart from the same Verge where the Trespass was committed; and if it so be, that they cannot be determined within the Limits of the same Verge, such Pleas shall cease before the Steward and Marshal, and the Plaintiffs shall have recourse to the Common Law: And now from the grievous Complaint of A. and B. we have

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(a) Note; A good Rule by *Babington. 9 H. 6. 2.* If a Statute gives a greater Penalty for an Offence, and also a special Action; there, if the Party who brings the Writ does not make mention of the Statute, he shall have no Advantage of the Penalty given by the Statute; as for Hunting in Parks, or *Pro uxore abducta cum*

bonis Viri. But if a Statute gives a greater Penalty; but no other Action lies, but that which was before at Common Law, there a Man shall have Advantage thereof (without mentioning the Statute) as in *Waste, &c.* See *9 Ed. 1. Fitz. Tenant in Dorver.* So in a special Assise, where the Party is found a Disseisor with Force, &c.

Writ of Certiorari to remove Records, &c.

received Information that you, at the Suit of R. of B. them the said, &c. do distrain to answer before you to the aforesaid R. of a certain Trespass to the same R. by the said A. and B. committed within our Verge at E. in the twelfth Year, &c. as it is said; which said Plea was not attached by you before we departed from that Verge, and many Ways unjustly disquiet them upon that Occasion, to the great Expence and Grievance of them the said A. and B. and against the Tenor of the Articles aforesaid; We therefore willing that the said Ordinance be inviolably observed in all and every one of its Articles, command you, if so it is, that then you in no wise distrain them the said A. and B. to answer before you of such Trespass, but wholly supersede the further Holding of that Plea before you; and the Distress, if any, &c. *Witness, &c.*

And if a Man be sued by Plaint before the Steward and Marshal of the King's House, who is not of the King's Household, and the Debtor plead, and affirmeth the Jurisdiction of the Court; and the Cause be adjudged against him; yet he shall have an Action upon the Statute against the Party who sueth him there; *quod vide T. 3 H. 3. Title Estoppel.*

Writ of Certiorari to remove Records, &c.

THE Writs of *Certiorari* for to remove Records out of one Court into B another are of several Forms; and the Form of the Writ to remove the Record of Redisseisin is such:

The King to the Sheriff, &c. Because for some certain Causes we will be certified upon the Record and Process, of a certain Inquisition made before you and the Keepers of the Pleas of our Crown in your County at N. by our Writ upon a certain Redisseisin to I. by R. done, as it is said, of one Messuage with the Appurtenances in N. We command you, that if Judgment be thereupon given, then that you send the Record and Process aforesaid, with all Things touching them, to us, under your Seal distinctly and openly, and this Writ (a), so that, &c. wheresoever,

(a) *Where the Tenor of the Record is sufficient, and where the Record itself must be removed.*

If one brings Debt on a Recovery in an inferior Court, as in a Court of Pie powders, &c. there it is not necessary for the Party to have the Record itself, nor the Tenor of it: So if one brings Debt in C. B. on Damages recovered in B. R. or in the Court of Norwich; but if *Nul tiel Record* be pleaded there, it is sufficient if the Tenor of the Record be removed into Chancery by *Certiorari*, and sent thence by *Mittimus*. 7 H. 6. 19. See 19 H. 6. 79 and 80. accordant, *Dyer* 187.

2. Where one is to sue Execution of a Record in another Court, as where it is to sue Execution in C. B. on a Recovery in Ancient

Demesne, or before Justices of Assise, or of Oyer and Terminer, there the Record itself ought to be removed into Chancery by *Certiorari*, and the said Record with the *Certiorari* sent into C. B. by *Mittimus*; and so if an Attain is before sued on such a Recovery. 34 H. 6. 251. But when Execution is to be sued in C. B. upon a Record which remains in the Treasury there, as on a Fine, Recovery, &c. (Note, All those Records were removed into the Receipt of the Exchequer, circa Temp. 9 H. 4. 37 H. 6. 17.) But where it is in the Chancery, as on a Petition among Parceners, *Dyer* 136. there they will not send in the Record itself, but a *Certiorari* to the Chamberlain and Treasurer, and a *Mittimus* of the Tenor of the Record: See the Cause 39 H. 6. 4. *per Prisot*; and if the Tenor of the Record
be

ever, &c. that having inspected the Record and Process aforesaid, we may cause further to be done thereupon, that which of Right, and according to the Law and Custom of our Realm of England, ought to be done. *Witness, &c.*

And he may remove it after a Disseisin, &c.

And if a Man be attainted in a Redisseisin or a Post-disseisin, and hath no Lands within the County to be put in Execution, he may remove that Record by a *Certiorari* into the King's Bench, and there have Execution. And he may remove a Recovery in an Assise of *Novel Disseisin* into the King's

C Bench by a *Certiorari* in like Manner. But the Writ of *Certiorari* saith, *If Judgment be thereupon given, then the Record and Process, &c. as above.* By which it appeareth, that it ought that Judgment be given in the Assise, &c. otherwise it seemeth he shall not have the Writ; for the *Certiorari* is said to remove the Record, to the Intent that he may sue forth Execution upon the same when it is removed in the King's Bench, for there they may award Execution into every County to execute the same.

Post. 247.
See a Recovery in Ancient Demesne, 39 H. 6. 3 & 4. But see 44 Ed. 3. 28. 36 H. 8. Br. *Certiorari* 20. There is no such Writ of *Certiorari* to

remove the Record in C. B. immediately, but first in the Chancery. Yet 43 Ass. 20. the contrary is admitted.

D If a Man do recover Lands by Assise of *Novel Disseisin*, and the Defendant will sue a Certificate before other Justices, there he ought to sue forth a *Certiorari* to the Justices of Assise, to certify the Record unto the new Justices, who hold Plea upon the Certificate, and the Words (*sine Dilationem*) shall not be put in any Writ which hath a certain Day of Return.

21 Ed. 3. 5. Br. *Cert.* Action 5.

E And if a Man recover *per Assise de Novel Disseisin*, and the Defendant will sue an Attaint before other Justices, then he ought for to have a *Certiorari* to the Justices of Assise to certify the Record, *If Judgment be given.*

And if a Man recover before Justices in Eyre in an Assise of *Novel Disseisin*, the other Party may sue forth an Attaint before other Justices, and have a *Certiorari* to the Justices in Eyre to send the Records before the other Justices.

F And the King may send his Writ of *Certiorari* to the Barons, Treasurer and Chamberlains of the Exchequer, to certify the Record of Assise in the Treasury in their Custody into the King's Bench.

37 H. 6. 15.

There is another Writ of *Certiorari* to the Treasurer and Chamberlains of the Exchequer to certify the Record of the Assise taken, but the Judgment

9 Ed. 4. 50. Choc. 24 Ed. 3. 24. 15 Ed. 3. 5. 8 Ed. 4. 25, 26.

be before the *Certiorari* filed in Chancery, they will not send the *Certiorari* into the Receipt. (Treasury) nor send in the Tenor which is there filed, but only *Tenorem Tenoris*, and it seems that is sufficient. 17 H. 6. 17, 28. See 24 Ed. 3. 79. that no Execution can be on the Tenor of a Record. *Dyer* 217. No *Scire facias* on the Transcript of a Resummons sent out of Chancery into C. B. and see *Dyer* 228. and 5 H. 7. 25. where a Record is pleaded in the same Court, and *Nul tiel Record* pleaded thereto, it ought not to be entred *quod habeat hic Recordum sub suo periculo. Et quia Justitarii hic ne advisari volunt super*

Inspectionem & Examinationem Recordi, &c. Dies dat' est partibus, &c. See and note 31 H. 6. 51. 39 H. 6. 3. 32 Ed. 3. *Quare imp.* 1. where *Nul tiel Record* is a good Plea. See 7 H. 6. 30.

Note; The Statute 1 & 2 Ph. & M. is, that no *Certiorari* to remove any Recognizance shall be awarded, except the Writ be signed with the Hand of the Chief Justice, or some other Justice in his Absence. *Vide Rast. Stat. Mainprise, pl. 45.*

Note; A Record may be removed after a *Disseisin, &c.*

was not given, because the Defendant died; but the Writ is of little Effect, G for that by the Death of the Defendant before Judgment the Writ is abated.

And if a Man will sue an Attaint upon Recovery in an Assise, which Record of Assise is in the Treasury, then he who bringeth the Attaint (a) ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record of Assise before the Justices, before the Attaint be sued forth.

[2.43.] If a Man do recover Damage in an Assise of *Novel Disseisin*, and before he A hath Execution of the Damages the Record is sent into the Treasury; then he may sue a *Certiorari* to the Treasurer and Chamberlains to certify the Record of Recovery in the Assise before the King, that Execution may be awarded for the Damages.

And if a Man recover Lands and Damages in an Assise of Fresh Force, B and the Defendant hath not any Thing within the City or Borough for to satisfy the Damages; then the Party may sue a *Certiorari* to the Mayor or Bailiffs to certify the Record into the King's Bench, that he may have Execution of the Damages recovered.

If the King maketh certain Persons Justices of Assise, &c. in one County, C and afterwards at another Assises he maketh other Justices of the same County, a general *Certiorari* shall be sued to the first Justices to certify all the Records of Assise and Juries which were taken in that County before the new Justices.

And in Assise of *Novel Disseisin*, if the Verdict pass for the Plaintiff, and D before Judgment be given a new Commission is to other Justices of the same County, the Party for whom the Verdict passed may sue forth a *Certiorari* to the first Justices to remove the Record into the King's Bench, to have Judgment given there upon that Assise and Verdict past; or may have a *Certiorari* to the first Justices to send the Record before the new Justices, that they may give Judgment thereupon: And it behoveth to have another Writ unto the new Justices to receive the Record, and that they proceed to Judgment. And when the Record is removed after Verdict given before other Justices, and they delay to proceed to Judgment upon the Verdict, the Party for whom the Judgment should be given may sue forth a Writ directed to them, *That having received and seen the Record and Process aforesaid*, they proceed to Judgment, &c. And thereupon the Party may have an *Alias* and a *Pluries*, Or *signify Cause to us*: And if they will not do any Thing, whether he shall have an Attachment is a Question; for there is a Statute made *A. 3 Ed. 3.* which willeth, that Commissioners in special Case limited by the Statute shall be punished for their Misdoings; but it seemeth it shall not be, if the Statute be not made, for that Cause only.

2. Aff. pl. 18.
2 R. 3. 9.
Bro. Indict-
ment 50.

And *Anno 27 Ed. 3.* in Assise a Justice was indicted, for that he caused an E Indictment, which was found to be but Trempass, to be entred in Record as Felony, &c. And the same was adjudged a void Indictment, because it was to make void a Record. But yet it seemeth he might be indicted for taking of Money, or for other Falstiy, which doth not destroy and defeat the Record. *Quare.*

(a) Note; Here there ought to be the Record itself, and not a Tenor only. 39 H. 6. 4.

- F And a Man may have a Writ to the same Justices before whom the Verdict passed, &c. to proceed to Judgment, as well as he shall have a Writ to other Justices before whom the Record is removed (a).
- G If a Man in an Assise of *Novel Disseisin*, or other Action real, before Justices in Eyre vouch one to Warranty, who presently entred into Warranty, and afterwards loseth; the Plaintiff shall recover, and Tenant shall have Judgment to recover in Value against the Voucher: Now if he who recovered in Value will have Execution of the Lands recovered in Value, he ought to sue a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Record in Assise into the Chancery; and when it is there certified, the King shall send the (b) Record by *Mittimus* into the Common Pleas, and thereupon the Justices shall award a *Scire facias* against the Party against whom the Recovery was, to come and shew why Execution should not be done of Lands in Value.
- H And a Man may sue a *Certiorari* directed to the Justices of Assise, to remove the Records of Assise into the Chancery, and also a Deed which is before them, &c. and afterwards he may sue forth a Writ of *Mittimus* unto the new Justices of Assise of those Records, and of the Deeds which remained before the other Justices.
- I And if the Husband and Wife sue a Bond, which is made to the Wife, in the Common Pleas, and the Deed is there denied, for that they remain in the Keeping of the *Custos Brevium*, and the Husband dieth; the Wife may have a Writ out of the Chancery directed to the *Custos Brevium* in the Common Pleas, that he deliver the Deed to the Wife, because the Plea is determined by the Death of the Husband.
- K And when the Justices in Eyre come, and shall be in any County by the King's Commission, then a Writ shall be sent to the Justices of the Common Pleas, to adjourn all the Pleas of that County which are in the Common Pleas before the Justices in Eyre, to be determined before them: And if the Justices in Eyre cannot determine the Pleas before they depart out of the County, then a Writ shall be sent to the Justices in Eyre, to send those Records and Pleas, which are not determined nor adjudged, into the Common Pleas again: And the Writ shall be such:

(a) Note; If the Justice of *Nisi prius* die before the Day in Bank, after the Verdict taken, the Court may receive the Record by the Hands of the Clerk of Assise, without any *Certiorari* to the Executors of the Justice, and the Entry hereof shall be general: *Ad quem Diem hic vener' partes, & Justiciarii ad Assisas coram quib', &c. Miserunt hic Recordum script' in hæc verba, &c.* And admit that it be Error, yet this shall be received to be assigned for Error; for it is contrary to what the Court did as Judge; and though in some Cases the Court shall give Faith to the Death of a Judge, as 2 H. 7. A Servant of an Attorney was received by a Judge who died

in *Pais. Dyer* 163. But Note; If a Justice of *Nisi prius* be removed, &c. the *Certiorari* shall be to himself; and so if his Executors have the Record, the *Certiorari* shall be to them. See *Dyer* 439. 13 H. 7. 21.

(b) Note; A *Scire facias* lies on the Tenor before any Entry thereof on the Roll: And if the Transcript of a Fine comes in by *Mittimus*, at the Suit of one, and another has Cause to have Execution upon the same Fine, he ought to pursue the *Mittimus* to have Execution; for otherwise he cannot have it, although the Tenor was entred on the Roll before.

The King to his beloved and faithful S. greeting: Whereas the Plea which was before our Justices of the Bench by our Writ between S. Demandant, and I. Tenant of one Messuage with the Appurtenances in T. in the County of N. together with the said Writ, was sent to be pleaded before you and your Companions, lately our Justices itinerant in the County aforesaid, and that Plea for some certain Causes in the Eyre aforesaid, remained undiscussed, without this, that the same Plea was adjourned elsewhere to be pleaded, by which, on the Behalf of him the said S. we are besought that we will do him Justice in the Premises; We, for that Cause thinking it to be expedient that our Justices of the Bench should be certified upon the Record and Procefs of the Plea aforesaid before you and your said Companions in the Eyre aforesaid, command you, that you send without Delay, the Record and Procefs aforesaid, together with the said Writ and all other Things touching them, to our said Justices of the Bench under your Seal distinctly and openly, and this Writ, that those being inspected, further Procefs may be in the said Plea, according to the Law and Custom of our Realm. Witness, &c.

[244.]

Br. Brief 414. And if an Assise of Novel Disseisin be brought in the King's Bench, and the A
 Vide 22 H. 6. Defendant alledge and plead, that there is a Writ of a higher Nature depend-
 15. ing in the Common Pleas for the same Land between the Plaintiff and Defen-
 23 Aff. 14. dant; then if they be at Issue, whether there be such a Writ depending or not,
 Br. Brief 282. the Defendant ought to sue a *Certiorari* out of the Chancery to the Justices of
 40 Ed. 3. 32. the Common Pleas, to remove and certify the Records into the Chancery;
 Br. Brief 304. and upon the same certified, he shall have a Writ of *Mittimus* out of the
 Chancery to the Justices of the King's Bench; with which Writ the King shall
 send the Tenor of the Record which is there into the King's Bench: And the
 Writ of *Mittimus* shall be such:

The King to his beloved and faithful R. of W. and his Companions, Justices assigned to hold Pleas before us, greeting: Whereas R. P. lately arraigned a certain Assise of Novel Disseisin before us at Westminster, by our Writ against B. of Tenements in A. and two Messuages, three Plough-lands, twenty Acres of Meadow with the Appurtenances in the same Town put in View, and the said B. in pleading in that Assise alledged that a Writ of an higher Nature then, and long before, was depending between the Parties aforesaid, before our beloved and faithful W. and his Companions our Justices of the Bench, and hath vouched to warrant it, the Record and Procefs thereof had before our said Justices of the Bench, as we have received Information: We thinking it to be expedient and necessary that you be certified upon the Record and Procefs aforesaid had before our said Justices of the Bench, send to you the Tenor thereof (which we caused to come before us in our Chancery) under the Foot of the Seal, commanding, that you having inspected the Record and Procefs aforesaid, you further Cause to be done, that which of Right and according to the Law and Custom of our Realm ought to be done. Witness, &c.

And if a Man do recover in an Assise of Novel Disseisin before Justices of B
 Assise in the County, and before Execution sued of the Damages, the Record is removed into the Chancery by *Certiorari*; he who recovered in the Assise may sue forth a Writ of *Mittimus* to send the Record into the King's Bench, commanding them for to proceed, and to award Execution; and the Writ is such:

The King to his beloved and faithful E. and his Companions our Justices assigned to hold Pleas before us, greeting: Whereas I. by the Recognizance of an Assise of Novel

Novel Disseisin, which W. arraigned before B. and his Companions lately Justices of Lord Edward some time King of England our Grandfather, assigned to take the Assises, &c. against R. and others, &c. of Tenements in T. recovered his Seisin of one Messuage with the Appurtenances in D. by the Consideration of the said Court, and his Damages, which were taxed to ten Pounds, as by the Record and Process of the Assise aforesaid, which we have caused to come before us for certain Causes, more fully appears; and Execution of the Judgment as to the Damages to be recovered, yet remains to be done, as we are given to understand on the Behalf of him the said I. We therefore willing that Execution of the said Judgment be duly demanded, send to you the Record and Process aforesaid under the Foot of our Seal, commanding you, that having seen the Record and Process aforesaid, you further cause to be done as to the Execution of the said Judgment, that which of Right and according to the Law and Custom of our Realm ought to be done. Witness, &c.

C And if a Man recover Lands by Assise of *Novel Disseisin* before Justices of Assise, and the Defendant hath a Writ of *Warrantia Chartæ* depending in the Common Pleas, the Party may sue a *Certiorari* to remove the Record of the Assise in Chancery, and thereupon have a *Mittimus* of the Record of Assise to the Justices of the Common Pleas, and in the End of the Writ shall be said, *That having inspected these you may be able more safely to proceed in the Plea of Warranty of Charters aforesaid, according to the Law, &c.*

D And in Assise of *Novel Disseisin*, if the Defendant plead two or three Recoveries in Assise before other Justices, which Record is in the Treasury, &c. now if the Record be denied, for which he sueth a *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certify the Records at a certain Day into the Chancery; if they at the Day certify any Records, but do not certify that there are other Rolls of the same Justices remaining in the Treasury in the *Tower of London*, so as that they have not made a full Search of the Records; then the King shall send to the Justices of Assise his Writ, reciting the Matter, commanding them for to continue that Assise until another Day, so as the Defendant be not damnified by failing of the Record; and the same seemeth to be reasonable.

And if a Man be bound in a Statute-Staple to pay a certain Sum of Money at a Day certain, after the Day the Party who hath the Statute, may come to the Mayor of the Staple and shew him the same, and pray him to certify the same into the Chancery; and if the Mayor will not so do, then the Party who hath the Obligation may come into the Chancery, and shew the same there, and pray a *Certiorari* to the Mayor to certify the Inrolment of the Statute: And if the Mayor do return, that he hath twice or oftner, certified the same before that Time, as appeareth by the Inrolment made by the Mayor, if there appear no such Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may sue forth a new *Certiorari* to the Mayor, reciting in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certify the Inrolment of the Statute which is before him; and upon the same he may have an *Alias* and a *Pluries* against the Mayor, if he will not certify the same, and also an Attachment against the Mayor, directed to the Sheriff, &c.

[245.]

Vide 10 Eliz.
Dyer 274,
275.

But see Lam-
bert 411.
The Use at
this Day is,
to award a
Subpœna to
the Commiss.
37 H. 6. 30.
Marle.

The Writ of *Certiorari* is an (a) original Writ, and issueth sometimes out of the Chancery, and sometimes out of the King's Bench, and lieth where the King would be certified of any Record which is in the Treasury, or in the Common Pleas, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commissioners, or before the Escheator; then the King may send that Writ to any of the said Courts or Offices, to certify such Record before him *in Banco*, or in the Chancery, or before other Justices, where the King pleaseth to have the same certified: And he or they to whom or who the *Certiorari* is directed, ought to send the same Record according to the Tenor of the Writ, and as the Writ doth command him; and if he or they fail so to do, then an *Alias* shall be awarded, and afterwards a *Pluries*, *Vel causam nobis significes*, and after an Attachment, if a good Cause be not returned upon the *Pluries*, wherefore they do not send the Record.

Also the King might by such Writ of *Certiorari* send for the Tenor of the Record, or for the Tenor of the Tenor of the Record, at his Election; and those Writs ought for to be obeyed, and the Records sent, as the Writ commandeth them to do; and the Form of some of those Writs here followeth:

The King to his beloved and faithful R. greeting: Because for some certain Causes we will be certified upon the Record and Process of Outlawry against I. in the County of T. pronounced before you and your Companions our Justices assigned to bear and determine divers Felonies in the County aforesaid: We command you, that, &c. you send the Tenor of the Record and Process aforesaid; or thus, That without Delay you send the Tenor of the Record and Process of Outlawry aforesaid, with all Things touching them, to us in our Chancery under your Seal distinctly and openly, and this Writ. Witness, &c.

And to certify an Indictment taken before the Justices in Eyre, the Form is such:

The King, &c. Because upon the Presentment made before you and your Companions our Justices itinerant in the County of Lincoln, of the Death of A. whereupon B. taken and detained in our Prison of N. is suspected, and also for some certain Causes we will be certified upon the Inquisition thereof before you made; We command you, that without Delay you send the Inrolment of the Presentment and Inquisition aforesaid to us, under your Seal distinctly and openly, and this Writ. Witness, &c.

And there is another Form of Writ directed to the Coroners:

34 Aff. 40.
Br. Certiorari.
the Writ was
awarded to the
Executors of
the Coroner.
Vi. 36 H. 6.
24. for Certi-
orari to the
Coroners, Vi.
2 Eliz. Dyer
223. Procter's
Case.

The King to his Coroners in the County of Lincoln, greeting: Because for some certain Causes we will be certified upon the Record and Process of a certain Appeal, which W. lately an Approver deceased, made against S. of a certain Robbery which the same W. and B. in your County, &c. one after the other said was done; We command you, that, &c. you send to us the Record and Process of the same Appeal with all Things touching them, under your Seals, &c. And that Writ lieth where a Man before Justices becometh an Approver, and the Coroner appointeth him to make his Approvement, and afterwards the Approver

(a) A *Certiorari* out of B. R. was to remove the Record of the Foot of a Fine in C. B. and it was not allowed, but a *Certiorari* out of the

Chancery for the Tenor was, and then it was sent into B. R. by *Mittimus*. Dyer 275.

dict;h;

dieth; the King may write unto the Coroner to send him the Record of the Approvement.

E And another Form of *Certiorari* to the Mayor and Sheriffs of London:

The King to the Mayor and Sheriffs of London, greeting: Because certain Busineses by Appeals, Indiements and Attachments before you in the said City of London entred, not yet determined, and certain Inquisitions made in the said City, were returned, the Inquisitions of which Busineses, and the Records and Procefs, remain in your Power, as it is said, and all which we will to be expedited and finally determined by our beloved and faithful B. C. and D. our Justices assigned to bear and determine divers Trespasses committed in the said City; We command you that, &c. you send the aforesaid Records and Procefs, with all Things touching them, to the said Justices under your Seals, &c.

F And if the King by Virtue of any Writ (a) of *Certiorari* remove any Record before any of the Justices, he may afterwards send for that Record, and remove the same before himself, or other Justices, at his Election; and then the Writ is such:

The King, &c. Because for some certain Causes we will be certified upon the Record and Procefs of a certain Inquisition taken before our beloved and faithful W. and P. our Justices assigned to deliver our Gaol of N. for the Death of E. whereof C. for the said Death is † suspected, as it is said, which said Record and Procefs we caused to come before you for certain Causes, which remain in your Power, as it is said; We command you, that you send the said Record and Procefs, with all Things touching them, to us under your Seals distinctly, &c.

G And when the King would be certified of an Outlawry in the County, then the *Certiorari* shall be as well to the Sheriff, as to the (b) Coroners of the County, to certify the same. But if a Man be condemned in the King's Bench, and afterwards outlawed for the King's Fine upon his Condemnation; if he will sue forth a Pardon of the Outlawry, he ought to have a *Certiorari* out of the Chancery to certify the Record of the Condemnation, which shall be such:

(a) And this Writ being delivered to the Justices, seems to suspend their Power, so that if they arraign the Party upon an Indiement afterwards, it is erroneous, 21 H. 6. 28. also after the Return, although the Indiement be not removed, they cannot proceed, and if they do, it is Error. 6 H. 7. 16. *per Keble.* See *Dyer* 245.

† Suspected; see *Spelman Gloss. verb. Relatus*, i. e. *vocatur in jus ut Rectum faciat.*

(b) See it directed to the Coroners only. 9 H. 4. 7. 36 H. 6. 13. *Dyer* 223. *viz.* where there is a Default in the Sheriff in not returning, or misreturning the Exigent. See the Writ to the Sheriff and Coroners. *Register* 284. 38 Ed. 3. 14. & *alibi.* For although the Judgment is rendered by the Coroners, as 21 H. 7. 33. yet the Record is in Custody of the Sheriff, and the Coroners have only a short Note or Memorandum of it, *Dyer* 223. and see in *London* a Writ to the Sheriffs only. *Dyer* 318.

See on a Record of Outlawry certified by a *Certiorari*, a Charter of Pardon, and a *Scire facias* issued, 9 H. 4. 7. and the Sheriff shall be amerced, if it be returned on the Exigent, *de 4to Exalt'* only, 36 H. 6. 13. but the Party shall not be disabled. 21 *Aff.* 49. If a *Capias utlagat'* shall be awarded, *quere* 38 Ed. 3. 14. the Goods of the Party seized as forfeited. *Dyer* 221. *Procter's Case*, *contr. Co. Lit.* 283. See the Judgment in *Procter's Case*; that the *Certiorari* shall be granted to the Coroners for the Outlawry, either for hastening the Sheriff to return the Exigent, or to have him amerced for his Concealment, or to falsify his Return, as if he returns *4to Exalt'*, where it was *5to Exalt'*, and is not to disable the Party; for till the Exigent, which is the Sheriff's Warrant, be returned, there is no Forfeiture, *contr. Dyer* 318. *Putten and Haines's Case.*

The King to his beloved and faithful I. his Chief Justice, &c. greeting: Whereas E. was convicted before you of a certain Trespass done to F. with Force and Arms, and because he came not before us to satisfy to us for his Ransom, which belongs to us in this Behalf, and to the said F. for his Damages adjudged in this Behalf, was put in Exigent to be outlawed, and upon that Occasion was afterwards outlawed, which said Outlawry is now returned before you, as we have received Information; and he the said E. hath besought us, that whereas he hath already satisfied the said F. of his Damages aforesaid, we would graciously pardon him the Outlawry aforesaid; We for that Cause willing to be certified upon the Record and Process of Outlawry aforesaid, and whether he the said E. hath satisfied the said F. of the Damages aforesaid (as it is said) or not, command you, that you render us more certain touching the Premises under your Seal distinctly and openly, &c.

[246.]

And if a Man be indicted before Justices of Gaol Delivery of Felony, and afterwards is acquitted; then if he who is acquitted doubteth he shall be troubled by reason of the same Indictment, he may sue forth a *Certiorari* to remove that Record and Process of the Inquisition, &c. into the Chancery, &c.

14 H. 7. 15. And if a Man do recover Debt or Damages before Justices of Oyer and Terminer, and hath not Execution, he may remove the Record and the Process into the King's Bench, and there sue Execution, and have a *Scire facias* upon the Record, &c.

15 H. 7. 5.
36 H. 6. 23.
39 H. 6. 34.

And if a Man do recover Damages in an Action of Trespass before Justices of Oyer and Terminer, and hath the Party in Execution by reason of the Judgment; if the Party in Execution dieth in Prison, he who recovered may sue a *Certiorari* to the Justices to remove the Record into the King's Bench, that the Justices there may award Execution, as the Law requireth in such Case. And I think, in that Case, that the Party shall have Execution by *Elegit*, or by *Scire facias*; for it seemeth not to be reasonable, that the Death of him who dieth in Prison should be a Satisfaction to the Party. *Tamen quere*, for the same is a Doubt.

34 H. 6. 47.
cont.
4 Ed. 4. 39.
33 H. 6. 48.
Danby.
47 Ed. 3.
Execut. 41.
2 Clo. 143.

Post. 247.

If a Man be arraigned of Murder, and found Guilty *se defendendo*, for which he is bailed or committed to Prison, he may have a *Certiorari* to remove the Record into the Chancery, that he may sue forth a Pardon thereupon according to the Course of the Law, &c.

If a Man recover Damages in Trespass in the King's Bench, and hath the Defendant's Lands in Execution by *Elegit*, and then he who recovereth is disseised by the other, for which he bringeth an Assise before the Justices of Assise; he who bringeth the Assise ought to have a *Certiorari* to the Chief Justice of the King's Bench to certify the Record and the Proceedings to Judgment given in the King's Bench, and of the Execution there; and the Plaintiff may have the Record in Chancery exemplified under the Great Seal, if need be, to the Justices of Assise.

And if a Man recover by Assise of Novel Disseisin, and the Party will sue an Attaint in the Common Pleas or in the King's Bench, he ought to sue a *Certiorari* to the Justices of Assise to remove the Record in the King's Bench, or into the Chancery, &c. that he might send the same before the Justices before whom the Attaint is sued, &c.

And

- F And it appeareth by the Register, in the Title [*Certiorari*] that if false Judgment be given before the Steward and Marshal of the King's House, upon a Plaint there sued, that the Party may sue an Attaint by Writ before the Steward and Marshal to attaint that Jury, &c. and that the King may send a *Certiorari* to certify the Record into the Chancery, which shall be directed to the Steward and Marshal of the King's House; but the Record shall be certified under the Seal of the Steward only, as appeareth by the Words of the Writ, &c.
- G There is another Writ of *Certiorari* directed to the Treasurer and Barons of the Exchequer to certify the King of the Debt which *I.* oweth unto him, and of the Debt which the Ancestor of the said *I.* owed the King, and which are clear Debts, and to certify the same without Delay under the Exchequer Seal, and not into the Chancery, nor into the King's Bench.
- H There is another *Certiorari* directed to the Justices of Gaol Delivery to certify the Record and Proceedings upon an Indictment of Murder, and Acquittal thereupon, into the Chancery, &c.
- I There is another *Certiorari* to the Justices of Peace to certify into the Chancery the Tenor of the Records and Process of Outlawry of several Persons returned before them.
- K There is another Writ of *Certiorari* directed to the Steward and Marshal of the King's House to certify under the Seal of the Steward into the King's Bench an Indictment taken before the Steward and Marshal, which the King would have to be determined only before him in the King's Bench.
- L There is another Writ of *Certiorari* to the Mayor and Sheriffs of *York* to certify the Tenor of the Record and Proceedings in an Assise of Fresh Force sued before them in the same City without Writ, and to certify the Tenor of the Record and Proceedings in the Chancery.
- M There is another Writ of *Certiorari* to the Bishop of *Oxford* to certify into the Chancery how many Persons were admitted, instituted and inducted into such a Church, since the Statute of King *Edward IV.* until this Time, and at whose Presentation, and by what Title, and in what Manner.
- N There is another Writ of *Certiorari* to the *Custos Brevium* to certify the King in the Chancery the Tenor of the original and judicial Writs, and the Warrants of Attorney which are in his Custody concerning such an Action or Suit.
- O And another Writ directed to the Treasurer and Chamberlains of the Exchequer to certify the King in the Chancery the Record and Proceedings of a Writ of *Quo Warranto* sued by the King's Ancestor, King *Edward I.* against the Abbot of *Westminster*, for certain Liberties claimed by the said Abbot, &c. [247.]
- A And another Writ of *Certiorari* to the Commissioners of Sewers to certify the King in the Chancery at a certain Day all the Presentments before them made against such a Person, &c.
- B And a Writ of *Certiorari* directed to the Chief Justice of the Common Pleas to certify the Tenor of a Record and Proceedings of Utlagary against such a one in *London*, remaining in *Middlesex* before the Justices of the Common Pleas, and to certify the same into the Chancery.

Writ of Certiorari to remove Records.

And if a Baron, who is a Peer of the Realm, be sued in the Common Pleas, C and Proceſs be awarded againſt him by *Capias* or *Exigent*, then he may ſue a *Certiorari* in the Chancery directed to the Juſtices of the Common Pleas or King's Bench, teſtifying that he is a Peer of the Realm, commanding them to award ſuch Proceſs againſt him as they ought to do againſt a Peer of the Realm; and the Writ is ſuch:

The King to his Juſtices of the Bench, greeting: We command you, if G. T. Knight, be impleaded before you at the Suit of any Perſon by an Action personal, you cauſe to be made ſuch Proceſs (and no other, againſt him in the ſaid Action) as againſt Lords, great Men, Earls or Barons of our Realm of England, who ought to come by Summons to our Parliaments, or any of them, according to the Law and Cuſtom of our Realm of England ought to be made, becauſe the ſaid G. T. one of the Barons of our ſaid Realm, coming to our Parliaments by our Royal Summons, is recorded; And this we command you; and make known to others whom it may concern, &c. Witneſs, &c.

And if a Man recover Damages and Coſts in an Aſſiſe of Novel Diſſeiſin, D he may ſue a *Certiorari* to remove the Record into the Chancery directed to the Juſtices of the Aſſiſe, to the Intent that the King may ſend the ſame to any of his Courts, that he who recovereth may ſue Execution of the Damages recovered; and upon that Record ſent into the King's Bench, he ſhall ſend that Record into the Common Pleas by Writ of *Mittimus* directed to the Juſtices there, that they do as they ought for to do according to the Law, to make the Damages to be levied.

There is another Form of *Certiorari* by theſe Words:

The King to the Sheriff, &c. We willing for certain Cauſes to be certified upon the Tenor of the Record and Proceſs of Outlawry againſt W. of B. of the County of N. Huſbandman in the ſame County: Or thus; In our Huſting of London proclaimed, and certified before the Juſtices of him the ſaid King of the Bench, which ſaid Record and Proceſs the ſame King for certain Cauſes made to be certified before him, as it is ſaid, and whether he the ſaid W. had rendred himſelf to the Priſon of the Marſhalſea of him the King before himſelf on the Occaſion aforeſaid, or not; therefore let the Tenor of the Record and Proceſs of Outlawry aforeſaid, and alſo the Certificate of the Render with this Bill, be ſent diſtinctly and openly without Delay to the ſaid King in his Chancery, under the Seals of I. F. his Chief Juſtice assigned to hold Pleas before the King himſelf. Witneſs the King himſelf at Weſtminſter the 12th Day of May in the 30th Year of his Reign.

Ant. 246. E.

And by that it appeareth, although the Record be remaining in Banco, yet the King may ſend to remove it into the Chancery.

And if a Man be arraigned of Murder, and it is found that he killed the F Party *ſe defendendo*, he ought for to ſue a *Certiorari* to remove the Record into the Chancery, and upon the Removal thereof to have his Pardon; and the Form of the Pardon doth appear in the Register, fol. 287, 288.

And if a Man be attainted in Aſſiſe of Novel Diſſeiſin before the Juſtices G of Aſſiſe, of a Diſſeiſin with Force, and be afterwards outlawed for the King's Fine; if he will have a Pardon of the Utlagary, he ought for to have a *Certiorari* directed to the Juſtices of Aſſiſe to certify the King in his Chancery the Tenor of the Record of the Aſſiſe, and alſo another Writ to the Juſtices

to certify the King in his Chancery, whether the Defendant in the Assise hath yielded himself to Prison, and hath satisfied the Party his Damages. And if the same be so certified in the Chancery, then upon that Certificate he shall have his Pardon of the Outlawry, and the Form of the Charter of Pardon appeareth in the Register, 288.

And if a Man be condemned in the Common Pleas in Debt, and Outlawry upon the same; then, before he shall have his Pardon, he ought for to yield himself to the Prison of the *Fleet*, and satisfy the Party, and the Record of his Condemnation and of the Satisfaction ought to be certified by *Certiorari* unto the King in his Chancery; and thereupon he shall have his Pardon, and that is by the Statute of 5 *Ed. 3. cap. 12.*

And if a Man be outlawed severally at the Suit of three several Persons in several Actions in which he was condemned, he ought to sue a *Certiorari* to remove the Tenor of those Records and Process into the Chancery; and also to have a *Certiorari* to the Justices of the Common Pleas, if the Suit be there, to certify the King in Chancery, whether he hath yielded himself to the Prison of the *Fleet*, and hath satisfied the Parties; and when the Chief Justice hath certified the same into the Chancery, then he shall have his Pardon for the Outlawries, and not before; and the Form of the Pardon appears in the Register, 288.

H There is another *Certiorari* to the Escheator to certify the Manner and Cause of taking of Lands into the King's Hands after the Death of one; and the Writ is such:

The King to his Escheator, &c. greeting: Because for some certain Causes we will be certified upon the Manner and Cause of taking of the Lands and Tenements which were I.'s deceased, in B. in your Bailiwick, seized by you into our Hand, as it is said; We command you, that without Delay you render us in our Chancery more certain upon the Manner and Cause abovesaid, under your Seal distinctly and openly, sending to us this Writ. Witnesses, &c.

But note, that it is enacted by Statute, that if the Escheator find any Office of any Lands or Tenements for the King, that he ought for to return the Office into the Chancery or into the Exchequer, within a Month after the finding thereof, upon Pain of twenty Pounds payable to the King, and to him that will sue for the same; and that Statute was made *Anno 8 H. 6. cap. 26.* [248.]

A There is another *Certiorari* directed to the Escheator to certify the King in Chancery, at his Peril, the Value of the Knights Fees and of the Advowsons which *I.* had, who is dead, who held of the King the Day of his Death *in Capite*; and the Writ is such:

The King to his Escheator, &c. We willing for certain Causes to be certified upon the true Value of the Knights Fees and Advowsons of Churches, which were I.'s deceased, who held of us in Chief in your Bailiwick, on the Day when he died, and which, by reason of the Death of him the said I. are taken into our Hand; We command you, that by the Oath of, &c. you diligently cause the Fees and Advowsons aforesaid to be extended, viz. how much they are worth in all Issues according to the Value thereof; and send that Extent without Delay distinctly and openly made, to us under your Seal and the Seals of them by whom the same was made, and this Writ. Witnesses, &c.

And

And if a Lunatick or a Madman doth kill a Man, or if a Man doth kill a Man by Misfortune, or if an Infant of eight Years old doth kill a Man; if they will sue a Pardon for the same, the Use is to sue a *Certiorari* to remove the Tenor of the Record and Procefs into the Chancery, and thereupon to have a Pardon; and in the Register do appear several Forms of such *Certiorari's* to remove such Records, which a Man may see there more fully, and therefore they are not here mentioned. B

Writ of Forcible Entry upon the Statute of 8 H. 6.

THE Writ upon the Statute of 8 H. 6. of Forcible Entry lies where a Man is disseised or put out of his Lands or (a) Tenements with Force, whereof he is seised as of an Estate of Freehold in Fee-tail, or in Fee, or for Life; he may sue forth that Writ of Forcible Entry upon that Statute: Or if he be disseised or put out of his Lands and Tenements peaceably, and afterwards the Disseisor, or he who ousteth him, doth keep and detain the Lands and Tenements with Force, then he who is put out may sue that Writ, if he will, and in that Writ he shall recover his Damages and his Costs treble for what he is found (b) damnified by the Jury, and what he hath expended in that Suit. C

2 H. 6. 47.

6 H. 6. 86.

3 Ed. 4. 19.

6 H. 7. 12.

14 H. 6. 16.

10 Ed. 4. 12.

If a Man enter into any Lands and Tenements, and disseiseth another with Force, and keepeth the Lands and Tenements and detaineth them with Force; then he who is ousted and disseised may have that Writ, although the Words of the Statute are in the Disjunctive, *scil'*, Where a Man is disseised with Force, or where a Man doth disseise one peaceably, and afterwards doth keep the Lands with Force; because the Intent of the Makers of the Statute was to punish such Force, whether it were upon the Entry and Disseisin, or upon the Keeping and Detaining of the Lands, &c. D

8 Ed. 4. 19.

1 H. 7. 12.

4 Ed. 4. 18.

3 Ed. 4. 4.

37 H. 6. 31.

cont.

And note, That none can have or maintain that Action, but he who hath a Freehold in the Lands or Tenements at the least; for Tenant for Years cannot maintain the Action, because the Words of the Writ are, *Expulit & disseisavit* (c); and Tenant for Years cannot be disseised, &c. And the Form of the Writ is such: E

The King to the Sherriff, &c. greeting: If A. shall make you secure, &c. then put B. &c. to answer as well to us, as to the said A. wherefore, whereas in the Statute set forth in the Parliament held at Westminster in the eighth Year of the Reign of King Henry the Sixth lately King of England, our Progenitor, amongst other Things it is contained, That if any Person be put out or disseised of any Lands or Tenements in a forcible Manner, or put out peaceably, and after holden out with strong Hand, or after such Entry any Feoffment or Discontinuance in any F

(a) Expulset of his Rent. 20 H. 6. 11. *vide* *ibid.* 47.

(b) See accordingly 14 H. 6. 32. 12 Ed. 4. 1. and yet the Statute speaks only of Damages.

(c) Yet Note; The Words in the Statute are in the Disjunctive, *viz.* *Expulset* ou *disseise*. See *Bro. Act'on sur Stat.* 17. And *quere* if a Lesfor may have this Writ, because he is not expelled. *Dyer* 142.

wife thereof be made, to defraud and take away the Right of the Possessor, that the Party aggrieved in this Behalf shall have Assise of Novel Disseisin or a Writ of Trespass against such Disseisor; and if the Party aggrieved shall recover by Assise or Action of Trespass, and it shall be found by Verdict, or in other Manner by due Form of Law, that the Party Defendant entered with Force into the Lands and Tenements, or them after his Entry did hold with Force, that the Plaintiff shall recover his treble Damages against the Defendant, and moreover that he make Fine and Ransom to us: The aforesaid B. hath forcibly put out and disseised the aforesaid A. of his Freehold in B. and him so put out and disseised, keeps out of the same, in Contempt of us, and to the great Damage and Grievance of him the said A. and against the Form of the Statute aforesaid, and against our Peace: And have there the Names of the Pledges and this Writ. Witness, &c.

G And the Process in that Writ is Attachment and Distress, and Process of Utlagary, &c.

H If a Man entereth with Force into Lands and Tenements to which he hath Title and Right of Entry, and put the Tenant of the Freehold out of those Lands or Tenements; now he who is so put out with Force shall not maintain an (a) Action of Forcible Entry against him who had Title or Right of Entry, because that that Entry is not any Disseisin of him; but he may (b) indict him for his entering by Force, and by this Indictment he shall be restored to his Possession again; and that is by the Statute of 8 H. 6. c. 9. [249.]

A (c) And in this Action of Forcible Entry the Plaintiff shall recover treble Damages, as well for the Occupying of the Lands, as for the first Entry therein.

B And a Man may have a Forcible Entry of Rent, as well as of Lands.

C And if a Man entereth and disseiseth another with Force, and afterwards the Disseisee re-entereth again; yet the Disseisee may bring his Action of Forcible Entry, and recover his treble Damages, although he be seised of the Land at the Time of the Action brought; but if a Man continueth three Years in peaceable Possession without Interruption, then he may hold the Lands with Force, and shall not be punished for that Force; and by the same Statute. ^{23 H. 8. f. 5.}

And in the Writ of Forcible Entry the Defendant may plead Not guilty, and it shall be a good Plea; but if the Defendant doth plead Matter in Bar, yet he ought in the End of his Plea in Bar to traverse the Entry with Force, which is alledged; as to say, *Abſque hoc* that he did enter with Force, &c. but yet the Demandant or Plaintiff ought to answer the special Matter alledged in the Bar, without answering to the Traverse with Force, &c. (d).

(a) *Viz.* He shall not maintain it on the Stat. R. 2. See 9 H. 6. 19. but the Party shall make Fine to the King for his Forcible Entry. See 31 H. 6. 39. (17 H. 7. 17.) That if the Title be found for the Plaintiff or Defendant, they shall make Fine, &c. *Vide post.* 249. D.

(b) *Note;* On an Indictment of Forcible Entry found before Justices of Peace, and removed hither on the Statutes 5 Eliz. and 15 R. 2. The Party pleads, as to the Entry with Force, Not guilty, and he was forced to answer to the Entry wherefore he justified the Entry. 7 H. 6. 13.

(c) See accordant *Dyer* 141. And *Note;* He who is so restored cannot maintain the Possession with Force, although he has had a peaceable Possession for three Years before the Expulsion. For the Possession is interrupted. See *Dyer* 187. None may grant Restitution but those Justices before whom the Force is found, and the Writ shall be under the *Teste* of one of them, and then no other Justices but those of B. R. can grant a *Superſedeas*.

(d) See where he maintained the Entry with Force, by Chacemert. 9 H. 6. 19. 21 H. 6. 39.

17 H. 7. 17. And if the special Matter alledged in the Bar be found for the Defendant, E he shall be excused, and the Force shall (a) not be inquired of; and if it be found with the Plaintiff, and against the Defendant, the Defendant shall be attainted of the Force, and shall pay treble Damages and Costs without Inquiry of the Force; and the same is the Usage at this Day. And one Joint-tenant or Tenant in Common may maintain this Action against his Companion, if he be put out with Force, &c.

And if a Man do enter with Force, and doth detain with Force any Lands F or Tenements, the Party may have his Action upon the Statute of Northampton, made Anno 2 Ed. 3. cap. 3. and the Writ shall be such:

The King to the Sheriff, &c. Because we are given to understand, that a great many Malefactors and Disturbers of our Peace, in unlawful Assemblies gathered together, armed and arrayed in a warlike Manner at C. have gone to enter the Close and Houses of certain of our liege Subjects there by Force and armed Power, and for this Purpose have agreed together to take, and prepare and intend to carry away the Goods, Rents and Revenues, and other their Goods whatsoever forth coming of their Possessions whatsoever, in Contempt of us, and to the manifest Terror and Disturbance of certain of our People there, and against the Form of the Statute at Northampton set forth, of not carrying Arms against the Peace of Lord Edward the Third lately King of England, our Progenitor, and against our Peace: We willing the said Statute to be inviolably observed, and willing the Breakers thereof to be chastised and punished according to the Force and Effect of the same Statute, command you, that at the Town of C. and elsewhere in your County, where it shall be necessary, you cause it publickly to be proclaimed, and on our Part firmly to be prohibited, that no one, of whatever State or Condition he shall be, there go armed against our Peace and the Form of the said Statute, nor cause any armed Power, or do any other Thing there or elsewhere, by which our Peace or the said Statute be hurt, or our People may be terrified, disturbed or in any Manner unduly aggrieved, upon Pain of the Loss of their Arms and Imprisonment of their Bodies at our Will, as in the said Statute it is more fully contained; and all those whom, after and against the Proclamation and Prohibition aforesaid, you shall find doing contrary, or by Inquisition (by you in due Manner and Form to be taken) shall be found to have done, together with their Arms and Armour found with them, cause to be arrested and taken, and the Bodies of such arrested Persons to be safely kept in our Prison, until you shall have other Matter in Command from us for their Delivery, and their Arms and Armour aforesaid to be appraised, and answer to us thereof; but without Delay render us more certain in our Chancery distinctly and openly under your Seal, of the Names of the said arrested Persons and of their Arms and Armour, and what and of what Kind they are, and of the Price or of the true Value thereof, and of your whole doing in this Behalf, sending to us this Writ. Witnesses, &c.

(a) And so it is on an Indictment of Forcible Entry. 7 H. 6. 13. *Vide contr.* where he pleads *Non est ingressus contra formam Statuti.* 1 H. 7. 19. 15 H. 7. 17.

Writ of Mainprise.

G THE Writ of Mainprise lieth properly where a Man is taken for Suspicion of Felony, or indicted of Felony, for the which Thing by the Law he is bailable, and he offereth sufficient Sureties unto the Sheriff or others who have Authority to bail him, and he or they do refuse for to let him to Bail; then he who is kept in Prison may sue forth such Writ:

The King to the Sheriff, &c. It is shewed to us on the Behalf of R. taken and detained in our Gaol of Gloucester, for a certain Theft of a certain Horſe, committed at S. as it is ſaid, whereof he is indicted before you by a certain Inqueſt of your Office, as it is ſaid, that although he hath ſeveral Times offered to you ſufficient Mainperners who will be Mainpriſe for him, according to the Form of the Statute ſome time ſince ſet forth at Weſtminſter, in which it is contained, that Perſons indicted of ſuch Thefts before Sheriffs and Bailiffs by Inqueſt taken of their Offices are repleviſable, yet ſo long as they are of good Fame; nevertheleſs you have hitherto delayed and yet do delay to receive thoſe Mainperners from the ſaid R. and to deliver him by ſuch Mainpriſe from the Gaol aforeſaid, to the great Expence and Grievance of him the ſaid R. and the manifeſt Peril of his Life, and againſt the Form of the Statute aforeſaid; and becauſe we will not that he the ſaid R. be longer detained in the ſaid Priſon againſt the Form of the Statute aforeſaid, We command you, that if he the ſaid R. is of good Fame, and was indicted by Inqueſt taken before you of your Office, of the Theft aforeſaid, as before is ſaid, and is detained in the ſaid Priſon for the ſame Theft, and upon no other Occaſion, and will find you ſufficient Mainperners (a) who will be Mainpriſe to have him before our Juſtices aſſigned or to be aſſigned to deliver our ſaid Gaol, at their next coming to deliver that Gaol, to ſtand to Right touching the ſaid Theft, according to the Law and Cuſtom of our Realm of England, then in the mean time cauſe him the ſaid A. to be delivered from the ſaid Priſon, by the Mainpriſe aboveſaid, according to the Form of the Statute aforeſaid; and have there the Names of the Mainperners and this Writ. Witneſs, &c.

[250.]

A But note, That it is ouſted by the Statute made *Anno 28 Ed. 3. c. 4.* that the Sheriffs ſhall not take the Indictments by Writs or Commiſſion directed **B** unto them. And ſee the Statute of *Weſtm. cap. 15.* for thoſe who ſhall be bailed.

C And if a Man be indicted of Felony before the Bailiffs of the Hundred, and put into the Gaol for the ſame, if he offer ſufficient Sureties to the Bailiffs, and they will not bail him, then he who is imprifoned may have ſuch a Writ unto the Sheriff, thus:

The King to the Sheriff, &c. It is ſhewed unto us on the Behalf of I. that whereas he is indicted by certain of his Enemies of Stealing a certain Ox of R. &c. committed at R. as it is ſaid, before the Bailiff F. of B. of his Hundred of P. by Inqueſt of the Office of the ſaid Bailiff taken, and upon that Occaſion is taken and

(a) Note; The Manucaptors are only to pay a Fine to the King. 11 H. 6. 31.

detained in our Prison of D. and although he the said I. hath several Times for himself offered sufficient Mainperners who will be Mainprise for him, according to the Form of the Statute some time since set forth at Westminster, wherein it is contained, &c. (as above.) We command you, that if he the said I. be of good Fame, and be indicted of the Theft aforesaid by Inquest taken before the same Bailiff of his Office, as before is said, and for the same Theft, &c. (as above) &c.

And there is another Writ for a Man who is taken for Suspicion of Felony, and kept in Prison; and another Writ for him who is arrested and kept in Prison for Petty Larceny, &c. But this Clause shall then be put into the Writ, *viz. Si de aliis Latrociniis prius reſtati non fuerint*: But this Clause, *dum tamen bonæ fame sint*, shall not be put in that Writ, where it is sued for him who is taken for Petty Larceny.

And if a Man who is of good Fame be appelled by an Approver, for which D Cause he is arrested and kept in Prison; then he may sue a Writ to the Sheriff, to let him be bailed upon good Sureties.

Ant. 66. And so if a Man be appelled by an Approver, and be taken and kept in Prison, and afterwards the Approver dieth; he may sue a Writ to the Sheriff to set him at Liberty upon sufficient Bail, if he be not a notorious Felon, although he be not a Man of good Fame.

And if a Man be indicted as Accessary to a Murder, as by his Assent and E Procurement, or Receipt, &c. or of aiding or counselling, &c. and be taken for the same, he may sue a Writ to the Sheriff to take Bail of him, until the Principals be convict or attainted, if they be of good Fame; but the Statute of *Westm. cap. 15.* doth not speak so largely as the Writs in the Register do, for the Statute doth not speak of Commandment, Abetment or Consent, &c.

And if a Man be taken by the King's Commission, and kept in Prison for F Felony or evil Doing, he may by his Friends put in Sureties in the Chancery, that he will appear before the Justices, &c. and be of good Behaviour, &c. and that Body for Body; and thereupon he shall have a Writ out of the Chancery upon the Sheriff, or unto the Constable of the Castle, where he is imprisoned, to set him at Liberty, if he be imprisoned for that Cause, and for no other.

Post. C. And if a Man be indicted before Justices of Peace of Trespafs, and imprisoned for the same by Process, he may sue a Writ out of the Chancery, directed to the Sheriff, to take Bail of him to appear before the Justices at the Sessions, and to set him at Liberty; but the Justices of Peace may take Bail of him, and set him at Liberty, if they so please.

If a Man be indicted of Trespafs before the Justices of the Peace, and put H in Prison therefore, he may sue a *Certiorari* to remove the Judgment into the King's Bench, directed to the Justices of Peace, and a *Habeas Corpus* to the Gaoler, that he bring the Party at his Costs before the King in his Bench such a Day, &c.

And if a Man be indicted of Forestalling, and put in Prison for the same, I he may sue a Writ out of the Chancery to the Sheriffs, to take Bail of him to appear before the Justices, &c. to answer the Trespafs, and then to set him at Liberty.

- K And if a Man sueth a Writ of Error upon false Judgment given against Post. C. him in any City or Borough, where he is condemned, and kept in Prison, he may sue a Writ out of the Chancery, directed to the Mayor or Bailiffs of the City or Borough, to take Surety of him to answer what shall be due to the King and to the Party, if the Judgment be affirmed, commanding them for to set him at Liberty.
- L And so if a Man sueth an Appeal of Maihem against another, and afterwards he is arrested at the Suit of the Defendant, or of another in any City or Borough, to the Intent that he may not sue his Appeal; he may have a Writ out of the Chancery to the Bailiffs or Mayor, that he take Sureties of him to answer to the Party there, and that they set him at Liberty; and all those Writs appear in the Register. [251.]
- A And if a Man be appelled of Robbery, he may sue a Writ out of the Chancery to the Sheriff, that he take Sureties of him to appear before the Justices, &c. and that he set him at Liberty; and if he have not arrested him, that he do not arrest him, if the Party offers to find such Sureties to the Sheriff, &c.
- B And if a Man be sued in Debt or Trespafs, and be arrested by *Capias* or *Exigent*, and kept in Prison, he may sue a Writ to the Sheriff out of the Chancery, to take Bail of him to appear at a Day, &c. and that he set him at Liberty, &c. But now by the Statute made *Anno 23 H. 6.* every Sheriff Ant. 238. D. is bounden to let to Bail every one in his Custody, who is arrested by Writ, Bill or Warrant, in any Action Personal, or upon Indictment of Trespafs, if they offer reasonable Sureties to appear at the Day, &c. in such Places where the Writ, Bill, &c. is returnable, &c. but Persons condemned, or outlawed, or excommunicated, or taken for Surety of the Peace, or Persons who are committed to Prison by the Commandment of any Justice, and Persons wandering who refuse to serve, who remain in the Custody of the Sheriff, all those Persons are excepted, for the Sheriff ought not to let such Persons to 23 H. 6. c. 10. Bail. 33 H. 6.
- C If a Man be condemned in Trespafs before Justices of the Peace, and be arrested and put into Prison in the Custody of the Sheriff, he may sue a Writ out of the Chancery to the Sheriff, that he take Bail of him, and set him at Liberty; and also he may have a Writ directed to the Justices of the Peace, commanding them to take Bail of him, and set him at Liberty: Or if the Party do find Sureties in the Chancery to appear and stand right in Law, then he shall have a Writ directed to the Justices of Peace, or unto the Sheriff, to set him at Liberty. Ant. 1
- D If a Man be bounden in a Statute-Merchant payable at a Day certain, and at the Day he pay Part of the Money, and hath a Release from the Conusee, of the Residue, if the Conusee sue Execution, and arrest the Party who hath the Release, then the Recognisor may sue in Chancery, &c. by his Friends, and find Sureties, Body for Body, that he shall appear such a Day in the King's Bench, and pay the (a) Money there, if he cannot otherwise be

(a) And so in Account when the Defendant *De Die in Diem*, and to pay the Sum, if found comes in by a *Capias ad Computandum*, he shall against him. *11 H. 6. 31.* where they were at find Sureties to keep his Day, *i. e.* to appear Issue before Auditors.

Writ of Diem clausit extremum.

discharged; and thereupon he shall have a Writ to the Sheriff, reciting the whole Matter, and how he hath found Sureties in the Chancery, as is afore-said, commanding him for to set him at Liberty; and thereupon the Sheriff ought for to set him at Liberty; and if he will not so do, he shall have an *Alias*, and a *Pluries*, and an Attachment against the Sheriff, &c.

And if a Man be condemned in any Court, and he is taken in Execution, and afterwards he is removed by a *Habeas Corpus*, or a *Certiorari* in Chancery; he shall not be bailed, but shall be remanded to Prison, there to remain according to the Law, until he hath satisfied the Party Plaintiff, &c. *Anno 2 H. 5. cap. 2.*

And two Justices of the Peace, whereof one is of the *Quorum*, may let Men suspected of Felony, or other Persons who areailable, to Bail, until the next General Sessions or Gaol-delivery: But the Justices of Peace are bound there to certify at the next General Sessions, or Gaol-delivery, that Recognizance unto the Justices, &c. upon Pain of Forfeiture of ten Pounds, and that is by the Statute of *3 H. 7. c. 3.*

And he who is acquitted of Murder within the Year at the King's Suit, shall not be released out of Prison until he find Sureties to appear at any Time the Justices will require him until the End of the Year, &c. because the Party may sue his Appeal after against him within the Year, &c.

And what Persons areailable, and what not, appeareth by the Statute of *H Westm. 1. c. 15.*

And the Justices of Gaol-delivery may punish those who let Men to Bail, who are notailable, by the Statute *de Finibus, cap. 3.*

And *Anno 4 Ed. 3. cap. 2.* The Marshal of the King's House cannot let those to Bail who are indicted or appelled of Felony, who are committed to them, &c. but the Justices of the King's Bench may punish them, &c. And *Anno 5 Ed. 3. cap. 8.* they cannot let to Bail those who render themselves at the *Exigent* in Felony, and are committed to the Marshal, nor by Bail nor Baston; and if they do they shall be imprisoned for Half a Year, and fined at the King's Pleasure.

Writ of Diem clausit extremum.

THE Writ of *Diem clausit extremum* properly lieth where the King's Tenant who holdeth of him *in Capite*, as of his Crown, by Knight's Service, or in Socage, dieth seised, his Heir within Age, or of full Age; then that Writ ought to issue forth, and the same ought to be at the Suit of the Heir, &c. for upon that, when the Heir cometh of full Age, he ought for to sue Livery of his Lands out of the King's Hands; and the Writ is such:

[252.] *The King to his beloved W. of K. his Escheator in the County of Devon, greeting: Because W. of S. who held of us in Chief is Dead, as we have received Information; We command you, that without Delay, you take into our Hand all the Lands and Tenements of which he the said W. was seised in his Demesne as of Fee, in your Bailiwick, on the Day when he died, and cause them to be safely kept until we shall command you some other Matter thereupon; and by the Oath of honest and*

and lawful Men of your Bailiwick, by whom the Truth of the Matter may be better known, inquire diligently, how much Lands and Tenements the said W. held of us in Chief, as well in Demesne as in Services in your Bailiwick on the Day when he died, and how much of others and by what Services, and how much those Lands and Tenements are worth by the Year in all Issues, and on what Day the said W. died, and who is his next Heir, and of what Age; and the Inquisition thereof distinctly and openly made, send to us without Delay in our Chancery, under your Seal, and the Seals of those by whom it shall be made, and this Writ. 4 Eliz. Dyer 213. They shall be only of the Lands in Socage in Capite, and not of the Lands holden of other Lords.

A And if the King had a Ward, and afterwards one who holdeth of the said Ward his Lands by Knight's Service dieth, his Heir within Age, or of full Age; then a *Diem clausit extremum* after his Death shall issue in this Form: Staudf 13. Plo. Com. 204.

The King to his beloved, &c. Because I. of S. who of the Inheritance of W. of O. deceased (who held of us in Chief, being within Age and in our Wardship) held by Knight Service, is dead, as we have received Information; We command you, that, &c. all the Lands and Tenements, &c. and by the Oath, &c. how much Lands and Tenements the said I. held of the Inheritance aforesaid, and who is his next Heir, &c. (as above.)

B And if the Heir dieth being in the Custody of the King, then shall issue another Writ of *Diem clausit extremum* in this Form:

The King, &c. Because R. of H. Son and Heir of I. of H. deceased, who held of us in Chief, lately, while he was within Age and in our Wardship, died, as we have received Information, &c. We command you, that by the Oath, &c. you inquire what Lands and what Tenements by the Death of the said I. and by reason of the Minority of the Heir of the said I. are come to our Hands, and so are in our Hand, and how much thereof are held of us in Chief, and how much of others, and by what Service, and how much, &c.

C And if the King's Tenant dieth who holdeth by Knight's Service, and his Wife be endowed, and the King hath the Wardship of the Lands for the Nonage of the Heir, and afterwards the Tenant in Dower dieth, the Lands being in Ward in the King's Hands; then a *Diem clausit extremum* shall be sued in this Manner:

The King to his beloved N. of B. Mayor of his City of London, and to his Escheator in the same City, greeting: Because E. who was the Wife of I. of B. (lately deceased) who held certain Lands and certain Tenements of us in Dower, of the Inheritance of the said I. some time her Husband, is dead, as we have received Information; We command you, that, &c. all the Lands and Tenements which the same E. so held in Dower of the Inheritance of the said I. in your Bailiwick, &c. by the Oath, &c. you diligently inquire, what Lands and Tenements the same E. so held in Dower of the said Inheritance in your Bailiwick on the Day when she died, and how much thereof are holden of us in Chief, and how much of others, and by what Services, &c.

D Otherwise after the Death of Tenant for Life of Lands, of which the King hath the Reversion in Ward:

Because A. who certain Lands and certain Tenements of the Inheritance of E. Cousin and Heir of H. deceased, who held of the King in Chief, being within Age and in the Wardship of the King, held for his Life, is dead, &c. We command you, &c. or thus, Because A. who held certain Lands and certain Tenements of

Writ of Diem clausit extremum.

us by the Law of England, of the Inheritance of M. his Wife lately Deceased, is E dead; We command you, &c.

And if Tenant for Life, the Remainder to the King and his Heirs, dieth, F the King shall have a *Diem clausit extremum* in this Manner:

Because A. who was the Wife, &c. held certain Lands and certain Tenements for her Life, and which, after the Death of her the said A. ought to remain to us and our Heirs, is dead; We command you, &c. what she so held, &c. and which after her Death, &c. ought to remain, &c. or thus, After the Death of the said B. ought to come to our Hands by reason of the Minority of the said Heir, &c.

And there are divers other Forms of Writs in the Register after the Death of Tenant for Life, or Tenant in Dower.

And if the King hath the Temporalities of the Bishop in his Hands, and G afterwards one who holdeth by Knight's Service of those Temporalities dieth, his Heir in Ward to the King, then the *Diem clausit extremum* shall be in such Form:

The King, &c. Because B. who held of the Archbishoprick of Canterbury (being void and in our Hand) by Knight's Service, is dead, &c. We command you, &c. of which the said A. was seised in his Demesne as of Fee, and held of the said Archbishoprick, without Delay, &c.

And if the King hath an Ideot in his Custody, and afterwards the Ideot I dieth, the Writ of *Diem clausit*, &c. shall be thus:

The King, &c. Because B. of C. lately a Fool and an Ideot, whose Lands and Tenements by reason of the said Ideocy are in our Hand, is dead, as we have received Information, We command you, that by the Oath of, &c. you diligently inquire what Lands and what Tenements by reason of the Ideocy of the said B. were taken into our Hand, and are yet in our Hand, and of whom or of what Persons they are holden, and by what Service, and how much those Lands are worth, &c. and who is next Heir, &c. and the Inquisition, &c.

[253.]

And if a Writ of *Diem clausit extremum* be sent to the Escheator, and the A Escheator be removed from his Office, or dieth before he make the Inquiry, &c. then shall issue forth another Writ of *Diem clausit extremum*, which shall be such:

The King, &c. Whereas we being lately given to understand that I. of B. who held of us in Chief, is dead, &c. we commanded our beloved W. of O. lately our Escheator in the County aforesaid, that, &c. all the Lands and Tenements, &c. (as before, changing what ought to be changed) and the said W. is now removed from the said Office, by which the Execution of our said Writ cannot be done, we willing to be certified upon the Premises, command you, that by the Oath, &c. you diligently make Inquisition upon the Premises, and the same distinctly, &c. Witness, &c.

And another Form of Writ in this Manner:

The King to his beloved, &c. Whereas we being lately given to understand that I. of B. who held of us in Chief is dead, commanded our beloved and faithful H. of B. lately our Escheator in the same County, that all the Lands, &c. he should take into our Hand without Delay, &c. until we should thereupon command some other Matter, and by the Oath, &c. should inquire what Land, (as in the first Writ) and the said H. before the said Writ was executed, was removed from the said Office: We willing to be certified more fully upon the Premises, command you,

you, that you make diligent Inquisition upon the said Articles and every of them, and the same distinctly and openly made, &c. (as above.)

But if the first Escheator do make Inquiry by Force of the Writ, and afterwards dieth before the Inquisition be returned into the Chancery, &c. then a *Certiorari* shall be awarded against his Executors, to certify the same Inquisition; because it is a good Matter of Record (a) when it is found, and the Jurors have put their Seal unto the same.

B If the King's Tenant, who holdeth of him by Knight's Service, dieth, his Heir within Age, and no Writ is awarded within one Year after his Death, then, after the Year is past, a Writ called a *Mandamus* shall issue forth; and that Writ doth not vary in Words from the Writ of *Diem clausit extremum*; and the Writ is such:

The King to his beloved W. of E. his Escheator in the County of B. greeting: We command you, that by the Oath of honest and lawful Men of your Bailiwick, by whom, &c. you diligently inquire what Lands and what Tenements I. of B. held of us in Chief, as well in Demesne, as in Service, in your Bailiwick on the Day when he died, and how much of others, and by what Service, and how much those Lands and Tenements are worth by the Year in all Issues, and what Time the said I. died, and who is his next Heir, and of what Age, and who, or what Persons occupied those Lands and Tenements, from the Time of the Death of the said I. and perceived the Rents and Profits thereof; and by what Title, and how and in what Manner, &c. and the Inquisition, &c.

C And note, That if a Man sue a Writ of *Diem clausit extremum*, it ought to be sued within the Year, and after the Year (b) he shall have that Writ of *Mandamus*, and not a *Diem clausit extremum*. And if a Man sue forth a Writ of *Diem clausit extremum*, and he loseth the Writ, or the same is taken from him with Force against his Will, he shall not have a new *Diem clausit*, &c. But if he hath a *Diem clausit*, &c. and the Heir be found within Age, and that the King hath Title to him, because that his Ancestor held of the King at the Time of his Death by Knight's Service, and afterwards the Heir dieth being in Ward to the King, and no Writ of *Diem clausit extremum* within the Year after his Death; yet there a *Mandamus* shall not be awarded after the Year of the Death of the Ward, but a new Writ of *Diem clausit extremum*, because the Heir died in Ward to the King; and that is by the Rule of the Register.

D Or if the King's Tenant who holdeth of the King by Knight's Service in chief dieth, the Heir may have a special Commission directed to certain Persons, to inquire what Lands, &c. his Father held the Day of his Death, &c. and that special Commission shall be as good for the Heir as a Writ of *Diem clausit extremum* after the Death of his Ancestor. And upon such Commission and Inquisition taken thereupon, and found and returned in the Chancery, the Heir at full Age shall have his Livery as well as upon a Writ of *Diem clausit extremum* sued forth, &c. But upon a general Commission to inquire of

Stamf. 52.
Vide 1 Eliz.
Dyer 170.
5 Ed. 4. 13.

Stamf. 52.

(a) But before the Indenting and the Ingrossing, and Setting of their Seals (although the Inquisition be taken and written on Paper) it is no Verdict; and therefore a *Superjudeas* then held

well, &c. Dyer 170. See the Stat. 44 Ed. 3. c. 13.

(b) *Contra* if the Writ abates for false Latin, &c. 2 H. 6. 5.

all Wards, &c. the Law is otherwise; for the Heir upon such a Commission and Inquisition returned shall not have Livery.

When the Heir, who is in Ward to the King by Reason of Lands holden *in Capite*, cometh to his full Age, then he shall have a Writ directed to the Escheator, to prove his Age, before he shall have Livery of his Lands; and the Writ is such:

[254.] *The King to his beloved I. of B. his Escheator in the County of B. greeting: E Because A. of B. who married M. the Sister and one of the Heirs of R. deceased, who held in Chief of Lord Edward lately King of England our Grandfather, says, that the said M. is of full Age, and prays of us the Lands and Tenements which are of the Inheritance of her the said M. (and one Part whereof are in our Hand, and another Part in the Custody of I. of H. under the Commission of our said Grandfather, until the lawful Age of the said Heir) to be rendered to him; wherefore we willing that the said M. who was born at G. in the County of N. and was baptized in the Church of the same Town, as it is said, shall prove her Age before you, command you, that at a certain Day and Place which you shall appoint for this Purpose, you take that Proof by the Oath as well of Knights as of honest and lawful Men of your Bailiwick, by whom that Proof may be taken, and the Truth of the Age of her the said M. better known and inquired of, and give Notice to the said I. that he may be then there to shew, if he has, or knows any thing, to say for himself, why to the said A. and the said M. as to her who is of full Age (if she be of full Age) we ought not to render the Lands and Tenements aforesaid, and without Delay send that Proof so taken, to us under your Seal, and the Seals of those by whom it shall be taken, and this Writ. Witnesses, &c.*

And by that Writ it appeareth, that the Writ *de Ætate probanda* shall be directed unto the Escheator of the County where the Heir was born, and not where the Lands of the Heir lie; but yet it seemeth reasonable that he may sue it where the Lands lie; for it may be that he was born where the King's Writ doth not run, or in *Ireland*, or beyond the Sea, as in *Calais*, &c.

There is another Form of Writ thus:

The King, &c. Because M. of P. Son and Heir of F. deceased, who held of us in Chief, says that he is of full Age, and prays of us the Lands and Tenements which are of his Inheritance, and in our Custody, until the lawful Age of the said Heir, to be rendered to him; wherefore we will, &c. (as before, until) may be better known and inquired into, &c. and, &c. send that Proof, &c. (as before).

There is another Form when the King committeth the Ward during his Nonage, then when he will sue an *Ætate probanda*, he ought to make mention of the same Commitment.

And if a Man be in Ward unto the King by Reason of the Temporalities of a Bishoprick in the King's Hands, when the Heir cometh of full Age he ought for to sue forth an *Ætate probanda*; and the Writ shall mention the whole Matter; and yet he doth not hold of the King *in Capite*.

And when the Heir hath proved the Age, and the Writ is returned, then he ought to do his Homage to the King, or agree with the King for the Respite of the Homage, and he shall have such Writ:

B The King to the same Escheator: Know you, that we have taken Homage of I. of H. Son and Heir of B. of H. deceased, of all the Lands and Tenements which the said B. his Father held of us in Chief on the Day when he died, and have rendered to him those Lands and Tenements; and therefore we command you, that having received Security of the said I. for his reasonable Relief to be paid to us at our Exchequer, you cause him the said I. to have full Seisin of all the Lands and Tenements aforesaid, and whereof the said B. his Father was seised in his Demesne as of Fee in your Bailiwick on the Day when he died, and which by reason of the Death of the same B. are taken into our Hand; saving the Right of every one, and saving to Maude who was the Wife of B. her reasonable Dower, falling to her of the said Lands and Tenements, according to the Law and Custom of our Realm of England, and by us to be assigned. *Witness, &c.*

C And the Writ aforesaid lieth, where the Heir was of full Age at the Time of the Death of his Ancestor, and sueth his Livery; but if the Heir were in Ward, and hath proved his Age, then he shall have a Writ thus:

The King, &c. Because N. of E. Son and Heir of B. of C. deceased, who held in Chief of Lord Edward lately King of England our Grandfather, hath sufficiently proved his Age before you, as it is found by the Proof taken by our Command and returned into our Chancery; we have taken Homage of the said N. of all the Lands and Tenements which the said B. his Father held of our said Grandfather in Chief on the Day when he died, and have rendered him those Lands and Tenements; and therefore we command you, that you cause him the said N. to have full Seisin of all the said Lands and Tenements, and of which the said B. his Father was seised in his Demesne as of Fee in your Bailiwick on the Day when he died, and which, after the Death of the said B. were taken into the Hand of our said Grandfather, and so taken are in our Hand, saving the Right of every one, &c. *Witness, &c.*

D (a) And if the Husband seised in Fee in Right of his Wife be outlawed of Felony, for which the Lands came into the King's Hands, and afterwards the Husband who is outlawed dieth, a Writ of *Diem clausit extremum* shall be awarded, which shall be such:

Because A. is dead, whose Lands and Tenements which he held, of the Right and Inheritance of N. lately his Wife, yet living, came to the Hands of Lord Edward lately King of England, the Fourth after the Conquest, by reason of a certain Outlawry proclaimed against him for a certain Felony, whereof he was indicted, as it is said, and were in the Hand of Lord Henry our Father, and so are in our Hand, &c. We command you, that by the Oath, &c. you inquire what Lands and what Tenements by reason of the said Felony came to the Hand of the said late King, and yet are in our Hand, and of whom or of what Persons

(a) So one has no Entry, although the Estate of the King was determined, because the Possession of the King continues. *Bro. Travers* 48. 4 *Aff.* 4. 19 *H. 6.* 20. 22 *Ed.* 4. 3. and *Page's Case*, 21 *Eliz.*

The Lessee for Life is attainted, the King seizes, the Lessee dies, he in Reversion was put to his *Montre de Droit*, adjudged in *Scaccario*:

And see accordant *Lib. Parl.* 287. *Petitus T. Redman*. See 8 *Co.* 170. *Hale's Case*. Tenant in Tail attainted of Treason, and all his Right given to the King, saving the Right of Entry of Strangers; the King's Estate determines after the Death of Tenant in Tail without Issue, without any Entry of the Donor, &c. *Dyer* 101. See 23 *H. 6.* *Entry conveyable* 53.

they are holden, and by what Service, and how and in what Manner, and how much those Lands and Tenements are worth by the Year in all Issues, according to the true Value thereof, and who or what Persons, hath or have occupied those Lands and Tenements from the Time of the Perpetration of the said Felony, and hath or have received the Issues and Profits thereof, by what Title, and how and in what Manner? And the Inquisition, &c.

[255.]

Quæ plura.

Stamf. Prærog.
52.

THE Form of the Writ of *Quæ plura* is such: A
The King to his Escheator, &c. greeting: Because we are given to understand that A. Deceased, who held of us in Chief, upon the Day when he died held more Lands and Tenements in the County aforesaid, than are specified in the Inquisition thereof taken by our Command after the Death of the said A. and returned into our Chancery; We command you, that by the Oath of honest, &c. you inquire what more Lands and Tenements the said A. held in the said County on the Day when he died, and of whom, or of what Persons those more Lands and Tenements are holden, and by what Service, and how much they are worth by the Year in all Issues, and the Inquisition, &c.

Stamf. Prærog.
52.4 Ed. 4. 22,
23.
Bro. Office 38.

The Writ of *Melius inquirendo* lieth, where the first Office is found by Virtue B
of a Writ of *Diem clausit extremum*, the which Office wanteth Certainty in divers Points, as in the Tenure of divers Lands, or in the Value of any of them, &c. then shall issue forth such Writ of *Melius inquirendo*: But if the first Office be found by the Escheator *virtute officii sui*, and not by Virtue of any Writ or Commission, and the Office wanteth Certainty in divers Things, as before; then a *Melius inquirendo* shall not issue forth, but the Office and Inquisition returned shall be as void, because it is not found by Virtue of any Commission or Writ, but only *ex officio* of the Escheator, without any Command to him to do the same; and therefore the same shall be taken as void, if it want Certainty in any Point.

Melius inquirendo.

THE Form of the Writ of *Melius inquirendo* is such: C

The King to the Escheator, &c. greeting: Whereas by a certain Inquisition taken before our Escheator in the County aforesaid, by our Command, and returned into our Chancery, it is found, that N. deceased, held divers Lands and Tenements with the Appurtenances in the said County; and who is the next Heir of the same N. on the Part of his Father the Jurors of that Inquest do not know; nevertheless on the Part of R. Mother of the said N. W. the Son of B. is his next Heir, and of the Age of twenty-one Years or more; and because in the said Inquisition
(a) it

(a) it is not specified, who is the next Heir of the said N. We command you, that by the Oath, &c. you inquire who is the next Heir of the said N. how and in what Manner, and the Inquisition, &c.

D There is another Form of Writ of *Melius inquirendo*, because he doth not specify in the Inquisition what Estate the Tenant had in the Lands; or because he doth not shew in the Office (b) of whom, or of who the Lands were holden; or because he doth not mention in the Writ the true Value, and the King is informed that the Lands are of greater Value than is certified by the Office. And note, That a *Melius inquirendo* shall be awarded upon a Surmise made in Court, that the Lands are of a greater yearly Value than is declared by the Office; and upon like Reason upon a Surmise made, that they are holden by other Services, or that the Tenant was seised of other Lands or other Estate than is mentioned in the Office, (c) a *Melius inquirendo* shall be awarded.

3 H. 6. 5, 8.
Dyer 269.
Kelw. 200.
14 H. 7. 23.

Writ of Livery.

E THERE is another Form of Writ of Livery, where the King's Tenant in *Capite* dieth, his Heir within Age, and the King seifeth the Ward, and afterwards that Heir dieth within Age, and in Ward to the King, for which the Lands come unto his Heir who is within Age, and in Ward to the King; now when that Heir cometh of full Age, he shall have a Writ of Livery in this Form:

The King to his beloved, &c. his Escheator in the County of I. greeting: Because I. Brother and Heir of S. Son and Heir of I. S. deceased, who held of us as of the Honour of H. being in our Hand, by the Service of rendering to the Guard of the Castle of Dover ten Shillings by the Year, hath sufficiently proved his Age before Roger of W. lately our Escheator in the County aforesaid, as it is found by that Proof taken by our Command, and returned into our Chancery; We have taken Homage and Fealty of him the said I. the Brother of S. of all the Lands and Tenements which the said I. S. the Father held of us as of the Honour aforesaid on the Day when he died, and which after the Death of the said I. S. the Father, and by reason of the Minority of him the said S. (which said S. while he was within Age and in our Custody died) duly came to our Hands, and we have rendered to him the said I. the Brother of S. all those Lands and Tenements with the Appurtenances; And therefore we command you, that you cause him the said I. the Brother of S. to have full Seisin of all the said Lands and Tenements with the Appurtenances, and of which the said I. S. the Father was seised in his Demise as of Fee in your Bailwick on the Day when he died, and which by the

(a) So if it be found by the *Dies clausit extremum*, that J. S. died seised, and that the Lands descended to T as Son and Heir, and does not shew of what Estate he died seised. 3 H. 6. 5.

(b) In such Case before the Statute 2 Ed. 6. c. 8. it should be taken to be held of the King in Chief. Dyer 144. See 2 H. 7. 18.

(c) See Cap. 168. The King shall not have a new *Melius inquirendo* after a former (returned, &c.) And Note, this Writ shall not issue where the first Writ was sufficient, tho' not (executed). 7 Eliz. 2. 25.

Death of the said I. S. the Father, and by reason of the Minority of him the said S. came to our Hands, and so are yet in our Hands by reason of the Minority of the said I. the Brother of S. saving the Right of every one.

And when an Heir shall have Livery at his full Age, and holdeth one Manor *in Capite* of the King by Knight's Service, and holdeth other Lands in several Counties of others, then a Writ shall issue to the Escheator of the County where he holdeth *in Capite*; and the Form shall be such: *Know you that we have taken Homage, &c.* And the Writs to other Escheators being thus: *Whereas we have taken Homage, &c.*

21 Ed. 3. 41.
2c. Of the Honour of Berkhamstead. So
29 H. 8. 24.

And it appeareth by the Writ before, that to hold Land (a) to render a certain Rent for the guarding of the Castle of *Dover* shall be a Tenure *in Capite*, and by Knight's Service; and it may be that in ancient Time he should guard the Castle, and that now the King hath taken the Rent for the same, and yet the Taking of the Rent doth not alter the Nature of the Tenure. *Quere.*

4 Eliz. Dyer
213. rule ac.
Plow. Com.
109, 204.
20 Eliz.
Dyer 362.

If two Men by Licence purchase Lands holden of the King *in Capite*, and afterwards one of them dieth, the other shall have the Lands (b) *cum exitibus* out of the King's Hands, upon the Matter found by Inquest; but by the Register he ought to shew the Licence in the Chancery. 39 Ed. 3. 21.

And if the King's Tenant who holdeth in Socage dieth, his Heir of the Age of fourteen Years and more, and the King seizeth the Lands, he ought for to sue Livery of them. But it seemeth the King ought not for feize the other Lands which he holdeth of other Lords by other Services, &c. and if he do, the other Lords shall have a Writ of *Amoveas manum*, which is called an *Ouster le main, una cum exitibus, &c.* so as they shall have (c) the Issues and Profits thereof which were taken by the King; and the Form of the Writ is such:

The King to his beloved A. his Escheator, &c. Because we have received Information by the Inquisition which we caused to be made by you, that I. of T. deceased, held in his Demesne as of Fee, on the Day when he died, one Messuage, and one Ofgang of Land with the Appurtenances in K. of us in Chief, as of the Honour of the Abbey of M. being in our Hand, by Fealty and by the Service of three Shillings and nine Pence to be rendred to us yearly, and that he did not hold any other Lands and Tenements of us in Chief as of the Crown, in your Bailiwick, on the Day when he died; by which the Custody of the Lands and Tenements which were the said I.'s on the said Day, to us, at present ought to belong, and that on the said Day he held divers other Lands and Tenements, of divers Lords, by divers Services; and that N. the Son of the said I. is his next Heir,

(a) See a Tenure of the Honour of *Bologn*, no Tenure in Chief, and therefore the Land was delivered to the Lords. *Rot. Claus.* 2 Ed. 1. M. 6. and so of the Honour of *Peverell*. *Rot. Claus.* 4 Ed. 1. M. 16. and *Rot. Claus.* 3 Ed. 1. M. 11. See *Stams. Prærog.* 12. 29. b. *Ant.* 175. *Bro. Livery* 58. 44 *Aff.* 35. 18 Ed. 3. 22.

(b) Yet see 18 Ed. 3. 21. If the King's Tenant aliens with Licence to A. for Life, Remainder to B. in Fee, and A. dies: Now the King has Cause to feize till B. has done his Services, and

therefore he shall not have an *Ouster le main, cum exitibus*, except *de gratia*.

(c) *Sed nota*; *Nomine exituum* are not such Profits for which the Escheator has accounted and paid into the Exchequer; nor Wards happening and seised, *per Wilby*; nor *Amerciaments* levied; nor an Avoidance of a Church. 18 Ed. 3. 22. 24 Ed. 3. 29. 39 Ed. 3. 21. and yet such Issues for which the Escheator has only accounted, but not paid, are restored. 24 Ed. 3. 60.

See *Stams. Prærog.* 13. b. *Mag. Char. Gard* 3. 38 H. 6. 8. *Livery* 60. 12 H. 8. *Gard* 77.

and

and of the Age of sixteen Years and upwards; We have received the Fealty of him the said N. for the Messuage and Lands aforesaid, and have rendred the same unto him; Therefore we command you, that having received Security of the said N. for his reasonable Relief to be paid to us at our Exchequer, you cause him the said N. to have full Seisin of the Messuage and Lands aforesaid, which by reason of the Death of him the said I. you took into our Hand, saving the Right of every one; but of other Lands and Tenements which the said I. held of other Lords in your Bailiwick on the Day when he died, which likewise on that Occasion you took into our Hand, intermeddle yourself no further, saving our Right and every other Person's Right whatsoever; and the Issues (if you have received any of the Lands and Tenements which are so holden of other Lords) deliver to those to whom they belong, &c.

And by this Writ it appeareth, that the Heir in Socage being of full Age at the Time of the Death of his Ancestor, shall have Livery *cum exitibus*; but if he were within the Age of fourteen Years at the Time of his Ancestor's Death, his *Prochein Amies* must sue an *Ouster le main cum exitibus*: But the other Lords shall have an *Ouster le main* for the Lands holden of them by Knight's Service *cum exitibus*.

D And if the King hath the Custody of an Idiot, and of his Lands which are holden of the King *in Capite*, and the Idiot dieth, and his Heir be of full Age; the Heir shall have a Writ of Livery in this Form:

The King, &c. to his Escheator, &c. Because we have received Information by the Inquisition which we caused to be made by you, that divers Lands and Tenements with the Appurtenances in O. were taken into the Hand of Lord Edward some time King of England, our Grandfather, by reason of the Foolishness and Idiccy of W. of P. now deceased, and so are in our Hand, and that the same Lands and Tenements are holden of us in Chief, as of the Honour of the Abbey of M. being in our Hand, by the Service of the eighth Part of one Knight's Fee, and doing Suit at our Wapentake of Holderness from three Weeks to three Weeks, and rendering to the Guard of our Castle of Skipton at Midlent seventeen Pence; and that Geoffrey the Son of William de Redmain, Cousin of the said W. is the next Heir of him the said W. and of full Age; We have received the Fealty of him the said Geoffrey for all the Lands and Tenements aforesaid, and have rendred them to him, and we of our especial Favour have respited the Homage of him the said Geoffrey until the Feast of Easter next coming; And therefore we command you, that having received Security of the said G. for his reasonable Relief to be rendred to us at our Exchequer, you cause him the said G. to have full Seisin of all the said Lands and Tenements being in our Hands, saving the Right of every Person whatsoever. Witness, &c.

E And when the Heir in Ward unto the King is of full Age, he shall have a Writ out of the Chancery unto the Keeper of the Privy Seal, testifying that he is of full Age; and thereupon he shall have a Privy Seal unto the King's Chamberlain to receive his Homage: And when he hath taken his Homage, he shall have a Writ from the Chamberlain to the Chancellor, testifying that he hath taken his Homage; and thereupon he shall have a Writ of Livery. And all this Matter appeareth at large in the Abridgments in the Title *Livery*, which see there.

Stamf. Prærog. 80, 84. Br. Livery 69. 35 H. 6. Livery 15. And if three Coparceners be in Ward to the King, the Coparcener who first cometh of Age shall sue Livery, and shall have Partition made thereupon. And if an Heir Female be in Ward to the King, and holdeth of other Lords in Socage; now when she cometh of the Age of fourteen Years she shall not sue Livery of the Lands holden in Socage, but she shall tarry until her Age of sixteen Years, if she be not married before that Age, for she shall sue Livery but once for all her Lands, &c.

[257.] Stamf. Prærog. 80. And if the Heir of full Age sue his Livery, and omitteth any Parcel of his Inheritance, as an Advowson, or a Reversion, or one Acre of Land which is not found by the Writ of *Diem clausit extremum*, and thereupon sueth his Livery; if it be found afterwards by another Office, that his Ancestor died seised of that Advowson, Reversion or Acre of Land, which was not found by the first Office upon which he sued his Livery before, then the King may reſeize all the Lands, &c. and the Heir shall answer the King for all the Rents, Issues and Profits received in the mean time by the Heir, &c.

Stamf. Prærog. 12. b. If the King's Tenant holdeth by Knight's Service and *in Capite*, and also holdeth other Lands of the Archbishop of *Canterbury* by Knight's Service, and dieth seised, his Heir within Age; the King shall have the Lands holden of him in Ward, and the Archbishop shall have the other Lands holden of him in Ward: And that is by the Statute of *Prærogativa Regis*, c. 1. And if the King seizeth all the Lands, the Archbishop shall have an *Ouſter le main cum exitibus*.

Stamf. Prærog. 8. And if the King's Tenant who holdeth *in Capite* and by Knight's Service, dieth seised, and a Stranger doth abate, for which the Heir at full Age recovereth by Aſſiſe of Mortdaunceſtor; yet he ought for to sue his Livery, and to do his Homage, and the Abator shall answer the King the mean Profits and Issues received. And the Writ *de Ætate probanda* may be directed to certain Commissioners to inquire of the Age of the Infant, as well as unto the Eſcheator; and the Form of the Commission is ſuch:

Commission pro Ætate probanda.

THE King to his beloved, &c. Know ye, that we have assigned you to inquire by the Oath as well of Knights as of other honest and lawful Men of the Venue of N. in the County of Lincoln, whether I. the Son and Heir of B. born at N. and baptized in the Church of the same Town, and who by reason of his Minority is in our Custody, be of full Age, as he saith, or not; And therefore we command you, that at a certain Day and Place, which you shall appoint for this Purpose, you make that Inquisition, and send the same distinctly and openly made to us in our Chancery without Delay, and this Writ; for we have commanded our Sheriff of Lincoln, that at the Day and Place whereof you shall give him Notice, he cause to come, &c. In Witness whereof, &c. And thereupon a Writ shall be sent to the Sheriff to return an Impanel before the Commissioners at a certain Day by them appointed; and the Writ shall be such:

The King to the Sheriff, &c. We command you, that you summon by good Summoners twelve as well Knights as other honest and lawful Men of the Venue of N. that they be before our beloved and faithful A. B. and C. and those whom we have associated unto them, at a certain Day and Place, whereof they the said A. B. and C. shall make known to you, ready by Oath to recognize, whether F. the Son and Heir of D. born at N. and baptized in the Church of the said Town, who by reason of his Minority is in our Custody, be of full Age (as he saith) or not; and in the mean time let them go to the said Church and Town, and diligently inquire the Truth of the Age of the said F. and cause their Names to be put in the Writ; and give Notice to E. and S. Guardians of the Land (a) of the said Heir, that they be then there to bear that Recognizance, to shew, if any thing ought to hinder, why the said I. ought not to have his Lands and Tenements: And have there the Names of those twelve, and this Writ. *Witness, &c.*

E And thereby it appeareth, that if the King hath committed the Wardship of the Land unto another, that the Committee shall be warned to be there; but if the King hath the Lands in his own Hands, then that Clause, *And give Notice to E. and S. the Guardians, &c.* shall be omitted out of the Writ.

F And by the Rule of the Register, a Woman shall do Homage and Fealty, and shall pay a Relief when she sueth her Livery, if she be of full Age at the Time of the Death of her Ancestors; and if she hath a Husband, if they have Issue when they sue Livery, then the Husband shall do the Homage and Fealty; but if they have no Issue, then the Husband shall do only Fealty (b).

G And if two Jointenants be, who hold of the King by Licence of Purchase, and one of them dieth, the other shall have an *Ouster le main cum exitibus*: But if the Purchase be made without Licence, then not, because that the King shall seize the Lands for the Alienation without Licence.

And if the King's Tenant hath Lands in several Counties, some holden of the King and some of other Lords, the Writ of Livery shall be directed unto the Escheator of that County where the Land which he holdeth of the King *in Capite* lieth, and the Writ shall begin, *Scias quod cepimus Homagium, &c.* and he shall have Writs unto the Escheators of the other Counties; and the Writ shall begin thus, *Cum ceperimus, &c.*

(a) So the Grantees of a Ward are made Parties; but see 43 *Ed.* 3. 20. where a *Sci'fa'* issued after the Return of the Commission against the Grantee, to shew why he should not have Livery; and the Grantee came and pleaded, that the Value of the Marriage was not satisfied to him, and prayed that he might hold the Land till he were satisfied, and the Heir did not deny the Plea, but went out of Court; and thereon the Grantee held the Land two Years, and then issued a *Scire facias* for the Heir against him, to have the Land; the Grantee pleads, that the Land was seized into the King's Hands, for that the Heir had not done his Homage, and the Verdict found that the Ward was leased by the King to the Grantee, rendering a Rent, and seized for the Non-payment; and after this, not-

withstanding, the Grantee sued a *Valorem Maritag'* against the Heir, and adjudged that it lay: For seeing the Heir was found of full Age, he ought to have had Livery instantly, though the Value of the Marriage was not satisfied without any *Scire facias* sued against the Grantee; and after Livery sued, the Grantee has his Remedy for the Value of the Marriage, by ——— or Action; and therefore till Livery sued, the Profits shall be to the King, and not set by way of Recompence for the Value of the Marriage. See 10 *H.* 6. 20.

(b) *Note; Bro. Fealty* 10 & 16. Where it is said, that Feme Covert shall not do Services, but her Husband for her; and therefore until Issue had between them the Homage is suspended. See *Litt.* 18, 19.

Writ of Livery post mortem Patris & Matris.

W RIT of Livery after the Death of the Father and Mother, &c. lieth where the Father and Mother hold severally Lands in Fee of the King *in Capite*, and they die, their Heir of full Age, he may sue any Writ of Livery to have Livery of the Lands of them both, and is not bounden to sue several Writs, as severally Heir to them; and the Form of the Writ is,

§ 258.] *The King to his beloved N. of W. his Escheator in the County of S. greeting: Know you, that we have received the Homage and Fealty of R. of B. Son and Heir of R. of B. Esquire, and I. his Wife deceased, due to us for all the Lands and Tenements which the said R. and I. held of us in Chief the Days when they died, and have rendred to them those Lands and Tenements with the Appurtenances: And therefore we command you, that having received Security of the said R. for his reasonable Relief to be paid to us at our Exchequer, you cause him the said R. to have full Seisin of all the Lands and Tenements aforesaid with the Appurtenances in your Bailiwick, and of which the said R. and I. were seised in their Demesne as of Fee on the Days when they died, and which, after the Death of the said R. and I. were taken into our Hand; saving the Right of every one. Witnesses, &c.*

Writ of Livery after the Death of Tenant by the Curtesy.

THERE is another Form of Writ (a) after the Death of Tenant by the Curtesy, thus:

The King to his beloved, &c. his Escheator in the County of Lincoln, &c. Know A you, that we have received the Homage of G. of N. Son of I. of N. deceased, for all the Lands and Tenements which the same I. held by the Law of England on the Day when he died, as of the Right of N. lately his Wife, now deceased, who held of us in Chief, the Mother of the said G. whose Heir he is, due to us, and have rendred those Lands and Tenements to him; And therefore we command you, that having received Security of the said G. for his Relief to be paid to us at our Exchequer, you cause him the said G. to have full Seisin of all the Lands and Tenements aforesaid with the Appurtenances, which, after the Death of the said I. were taken into our Hand; saving the Right of every one. Witnesses, &c.

(b) And thereby it appeareth, that the Tenant by the Curtesy shall have the Lands after the Death of his Wife, without suing an *Ouster le main* for those Lands holden of the King, but that the Heir after his Death shall sue his Livery for them, &c. because that the Tenant by the Curtesy doth remain Tenant to the King.

(a) See 12 Ed. 3. *Quare imp.* 159.

Capite descend, and she dies before Livery, and

(b) *A.* takes *B.* to Wife, to whom Lands *in* after Issue had, *A.* sues Livery. *Dyer* 229.

And if a Man have Lands which are held of the King *in Capite* by the Curtesy, and he hath Lands in Fee, and dieth; his Heir shall sue Livery as well for the Lands whereof the Tenant was seised in Fee, as for the Lands which he held by the Curtesy, although the Lands of which the Tenant by the Curtesy was seised in Fee were not holden of the King *in Capite*, &c. because that as well those Lands are seised into the King's Hands, as the Lands which he held by the Curtesy; and the Writ shall be such:

Stamf. Pra-rog. 5. 6. b. Bro. Livery 67. cont.

The King to his beloved, &c. Escheator in the County of York, greeting: Know you, that we have received the Homage and Fealty of G. the Son and Heir of W. of S. and I. who was the Wife of the same W. of S. deceased, for all the Lands and Tenements which the said W. of S. his Father held as well by the Law of England of the Inheritance of the said I. some time his Wife, after the Death of her the said I. as in his Demesne as of Fee, on the Day when he died, and we have rendred to him those Lands and Tenements; And therefore we command you, that having received Security of the said G. the Son of W. for his reasonable Relief to be paid to us at our Exchequer, you cause him the said G. the Son of W. of S. to have full Seisin of all the Lands and Tenements aforesaid with the Appurtenances, and which the said W. of S. his Father held as well by the Law of England after the Death of the said I. some time his Wife, as in his Demesne as of Fee, in your Bailiwick, on the Day when he died, and which, after the Death of him the said W. of S. were taken into our Hand; saving the Right of every one. Witness, &c.

And if the King's Tenant dieth, and after his Death the Wife be endowed, then after the Death of the Tenant in Dower, the Lands which she held in Dower shall be seised into the King's Hands, and the Heir shall sue Livery of them; and the Writ shall be such:

7 H. 6. 3. Stamf. Pra-rog. 13. a.

Writ of Livery after the Death of the Tenant in Dower.

THE King to his beloved T. of S. his Escheator in the County of York, greeting: Know you, that we have received the Homage and Fealty of our beloved and faithful R. Baron of F. due to us for all the Lands and Tenements which A. who was the Wife of R. of N. formerly the Wife of R. lately Baron of F. after the Death of the said R. lately Baron of F. the first Husband of her the said A. the Grandfather of him the said R. now Baron of S. held of us in Chief on the Day when she died, and we have rendred to him those Lands and Tenements; And therefore we command you, that having received Security of the said R. now Baron of F. for his reasonable Relief to be paid to us at our Exchequer, you cause him the said R. now Baron of F. to have full Seisin of all the Lands and Tenements aforesaid with the Appurtenances, which the said A. held in Dower after the Death of the said R. her Husband the Grandfather of the said now Baron, of the Inheritance aforesaid in your Bailiwick, on the Day when she died, and which, after the Death of her the said A. were taken into our Hand; saving the Right of every one. Witness, &c.

Stamf. Prae-
rog. 13. a.

And by that it appeareth, that Tenant in Dower who is endowed in the Chancery, &c. of Lands holden of the King *in Capite*, or of other Lands which are in the King's Hands by the Death of his Tenant, that she shall hold them of the King, and the Heir shall have Livery of those Lands after her Death; yet it seemeth that the Reversion of those Lands which she holdeth in Dower remaineth not in the King, but in the Heir; and if she commit Waste, the Heir shall punish the Waste.

There is another Form of Writ of Livery after the Death of the King's C Tenant, who holdeth Parcel in Fee, or Parcel in Tail, or for Life, thus:

*Writ of Livery after the Death of Tenant in Tail and
Tenant for Life.*

[259.] **T**HE King to his beloved, &c. his Escheator in the County of Salop and the Marches of Wales adjacent to the same County, greeting: Because we have received the Homage and Fealty of our beloved and faithful I. of B. Son and Heir of I. of B. the elder, of all the Lands and Tenements with the Appurtenances which the same I. held of us in Chief, as well in Fee as for Term of his Life, on the Day when he died, and which, after the Death of the said I. the Father, ought to descend to the said I. the Son, or otherwise remain to the same I. the Son and S. his Wife, and to the Heirs of their Bodies issuing, and we have rendred to him those Lands and Tenements; Therefore we command you, that having received Security of the said I. for his reasonable Relief to be paid to us at our Exchequer, you cause him the said I. the Son to have full Seisin of all the Lands and Tenements aforesaid with the Appurtenances, and of which the said I. his Father was seised in his Demesne as of Fee-tail, the Reversion whereof belongs to the said I. the Son, in your Bailiwick, on the Day when he died, and which, after the Death of his said Father, were taken into our Hand; saving the Right of every one. Witness, &c.

And if Tenant in Tail holdeth of the King *in Capite*, and dieth, the Heir then of full Age, he shall have such Writ of Livery.

Writ of Livery for the Heir in Tail.

A **T**HE King, &c. Know you, that we have received the Homage and Fealty of our beloved W. &c. Son and Heir of W. of B. deceased, of all the Lands and Tenements which the said W. his Father held of us in Chief to him and his Heirs of his Body issuing, of the Gift and Grant of W. of S. by a Fine thereof levied in our Court with our Licence, on the Day of his Death, and we have rendered to him those Lands and Tenements; And therefore we command you, that having received Security of the said W. &c.

And if the King's Tenant holdeth by Petit Serjeanty, and dieth, and his Heir be within Age of eighteen Years, then he shall have a Writ to have Seisin of the Lands, thus :

Writ of Livery for Lands by Petit Serjeanty.

B **T**HE King to his beloved, &c. his Escheator in the County of Suffolk, greeting: Because we have received Information by the Inquisition which we caused to be made by you, that T. P. deceased held of us in Chief in his Demesne as of Fee, on the Day when he died, ten Messuages, one hundred Acres of Land, forty Acres of Meadow and ten Acres of Pasture, thirty Acres of Moor, and twenty Shillings Rent, with the Appurtenances in W. in the County aforesaid, by the Service of twenty Shillings to be paid yearly to us at the Manor of L. for all Service, and that he did not hold any other Lands or Tenements in his Demesne as of Fee, of us or of others in the County aforesaid, on the Day when he died, and that W. the Son of the aforesaid T. is the next Heir of the said T. and of the Age of eighteen Years and more; We command you, that having taken Fealty of him the said W. according to the Form of a certain Schedule inclosed in these Presents, and having received Security from the said W. for his reasonable Relief to be paid to us at our Exchequer, you cause him the said W. to have full Seisin of the Messuage, Land, Meadow, Moor, and Rent aforesaid, with the Appurtenances, which, by the Death of the said T. were taken into our Hand; saving the Right of every one. Witness, &c.

And thereby it appeareth, that the Heir in Socage shall not have Livery *cum exitibus*, &c. if he pass the Age of fourteen Years; but within the Age of fourteen Years he shall have Livery *cum exitibus*, &c. and the same is holden for a Difference at this Day.

C The King's Tenant hath Issue a Son *D. de B.* and two Daughters, and dieth; and the said *D. de B.* hath Livery, and afterwards hath Issue a Son *H. de B.* and dieth, the said *H.* being in Ward to the King for his Nonage, and afterwards one Sister hath Issue a Son, and dieth, and afterwards *H.* dieth being in Ward to the King, and his Aunt and the Son of the other Sister, being of full Age, sue to have Livery: Now they ought to have a Writ directed to the Escheator, by which it shall be commanded to the Escheator to make Livery to them, and

Stamf. Præ-
rog. 24. b.

and to make Partition between them of those Lands which are in the King's Hands, so as each Coparcener shall have Part of the Lands which are holden of the King *in Capite*; and the Writ shall be such:

Writ of Livery for the Aunt and Niece to make Partition.

THE King to his beloved A. of H. his Escheator in the County of, &c. greeting: Know you, that we have received the Homage and Fealty as well of D. of B. the Son of A. of B. one of the Sisters of D. of B. as of T. of B. the other of the Sisters of the said D. of B. Cousin and Heir of H. of B. Son and Heir of the said D. of B. deceased, who held of us in Chief, due to us for all the Lands and Tenements which the said D. of B. held in Chief, which by the Death of the said D. of B. and by reason of the Minority of H. the Son and Heir of the said D. of B. (which said H. died while he was under Age and in our Custody) came to our Hands; And we have rendred to the said D. of B. and T. the Lands and Tenements aforesaid, and therefore we command you, that having received Security of the said D. of B. and T. for their reasonable Reliefs to be paid to us at our Exchequer, and having made a legal Partition of all the Lands and Tenements with the Appurtenances in your Bailiwick, which by the Death of the said D. of B. and by reason of the Minority of the said H. came to our Hands, and yet remain in our Hand, according to the Extent thereof made, or to be again made (if it shall be necessary) into two equal Parts, in the Presence of the said D. of B. and T. or their Attornies in this Behalf, to be warned, if they will be present, [260.] you cause them the said D. of B. and T. to have full Seisin of their Parts thereof, according to that Partition, falling to them, according to the Law and Custom of our Realm of England, saving the Right of every one: Provided always, that both the said D. of B. and T. have Part of the Lands and Tenements which are holden of us in Chief and their own Purparty, and each of them be our Tenant, with the Appurtenances, &c. Witness, &c.

And if a Man and his Wife hold a Manor of the King *in Capite* in Tail, A and die, and have Issue two Sons, and the younger Son is found Heir by Virtue of a Writ of *Diem clausit extremum*, and of full Age, and the King maketh Livery unto him of the Manor, and afterwards by another Office found by Commission, &c. it is found that the elder Brother is Son and Heir, &c. then upon the last Office found, the King shall send a *Scire facias* directed to the Sheriff, to warn him to shew why the Manor shall not be re seized into the King's Hand, and he to answer the Profits received in the mean time. And if the Sheriff do return the Writ served, and that the Party is warned, and doth not appear, then the King shall re seize the Lands, and shall make Livery of that Manor unto the elder Brother; and the Writ by which the Service shall be made, shall be such:

(a) *Writ*

(a) *Writ of Livery, and to make void a Livery made before.*

THE King to his beloved, &c. his Escheator in the County, &c. *Whereas we* Stamf. 52
have lately found by the Inquisition of H. of S. our Escheator in the County
aforsaid, taken by our Command, and returned into our Chancery, that I. the Son
of H. B. deceased, and T. his Wife (who survived the said I. some time her Hus-
band, likewise deceased) on the Days when they died held in Fee-tail to them and
the Heirs of their Bodies issuing, the Manor of I. with the Appurtenances in the
said County, of us in Chief by Knight's Service, and that T. the Son of the said
I. and T. then was the next Heir of the same I. and T. and of full Age, we took
the Homage and Fealty of him the said T. due to us for the Manor aforsaid, and
rendred to him that Manor with the Appurtenances, and commanded it to be deli-
vered to him, as by the Inspection of the Rolls of our Chancery fully appears; and
afterwards H. B. the Son and Heir of the said I. and T. beseeching us, that
whereas by a certain other Inquisition posterior, taken by our Command by the said
Escheator, and returned into our Chancery, it is found that the said I. and T. on
the Days when they died held in Fee-tail to them and their Heirs of their Bodies
issuing, the said Manor with the Appurtenances of us in Chief by Knight's Service,
in Form aforsaid, and the said H. the Son of the said I. and T. of the Age of
forty-six Years, is (the elder Brother of him the said T. and) next Heir of them
the said I. and T. without this, that the said T. is the next Heir to the said I.
and T. as is supposed by the said first Inquisition, we would resume the same Ma-
nor with the Appurtenances into our Hands, and command it to be delivered to him
the said H. as the elder Brother of the said T. and nearer Heir of the said I. and
T. And we, willing to be done in this Behalf that which is just, by our Writ
commanded our Sheriff of our County aforsaid, that he should give Notice to the
said T. that he should be before us in our Chancery in eight Days of Saint Hilary
then next, wheresoever it should be, to shew if he had or knew any thing to say for
himself, why the said Manor with the Appurtenances, together with the Issues
thereof by him received, ought not to be resumed into our Hand, and the same
Manor delivered to the said H. as the elder Brother of the said T. Son and
nearer Heir of them the said I. and T. and why he should not answer to us for the
said Issues so received by him the said T. and further to do and receive what our
Court should consider in this Behalf; and the said Sheriff returned to us, that he
gave Notice to the said T. that he should be before us in our Chancery at the said
Day, wheresoever it should then be, to shew that which our said Writ required;
at which Day the said T. being solemnly called in the Chancery aforsaid, did not
appear; wherefore it was considered, that the said Manor with the Appurtenan-
ces, together with the Issues thereof received by the said T. should be resumed into
our Hand, and he should answer to us for the same Issues, and the said Mancr

(a) *And Note; For Revocation of a Livery of full Age, when he was under Age. Rot. Parl. made on a false Inquisition, as finding the Heir 42 Ed. 2. m. 2. the Case of Wm. de Septon.*

should

should be delivered to the said S. We have received the Homage and Fealty of the said H. due to us for the Manor aforesaid with the Appurtenances, and have rendred to him that Manor with the Appurtenances; We command you, that having resumed into our Hand the said Manor with the Appurtenances in your Bailiwick, together with the Issues aforesaid, and having received Security of the said H. for his reasonable Relief, to be paid to us at our Exchequer, you cause him the said H. without Delay to have full Seisin of the Manor aforesaid with the Appurtenances; saving the Right of every one, and saving to us the Issues of the Manor aforesaid from the Time of the Death of the said T. so received. Witnesses, &c.

Writ of Livery and Partition which shall issue out of the Chancery unto the Escheator upon Partition there made.

THE Writ which shall be directed to the Escheator to deliver Seisin of **B** Lands unto one Coparcener, or divers, where any of them are within Age and in Ward, is made in several Manners: One Manner of Writ is, when one Coparcener is of full Age, and the other Coparcener is within Age, and in the Custody of *P.* to whom the King hath committed the Wardship; then by the Assent of the King's Committee the Partition may be made in the Chancery during the Nonage of the Heir in Ward; and then the Writ directed to the Escheator shall be such:

[261.]

The King to his beloved I. of W. his Escheator in the Counties of Somerset and Dorset, greeting: Know you, that by the Assent of P. &c. Guardians of T. of M. the Daughter of A. one of the Sisters of T. of B. deceased, who held of us in Chief, being within Age and in our Custody, Cousin and one of the Heirs to whom one Purparty, and of C. the Sister and other Heir of the said T. of B. being of full Age, to whom the other Purparty, as well of the Lands and Tenements which were Margery's, who was the Wife of T. of B. the elder, likewise deceased, held in Dower or otherwise for the Term of her Life, of the Inheritance of the said T. of M. and C. on the Day which she died, belong; We have assigned to the said C. the Manors, Lands and Tenements underwritten, viz. The Manor of, &c. to have it for the Purparty of her the said C. falling to her of all the Manors, Lands and Tenements aforesaid, according to the Law and Custom of our Realm, and we have rendred to her the said C. (whose Homage and Fealty we have received) her Purparty aforesaid; And therefore we command you, that having taken Security of the said C. for her reasonable Relief to be paid to us at our Exchequer, you deliver to the said C. the said Manor, &c. with the Appurtenances in your Bailiwick, to have for her Purparty aforesaid; saving the Right of every one, &c.

If the King's Tenant hath Issue *R. N.* his Son, and *Alice* his Daughter, and **A** dieth, and afterwards *R. N.* hath Issue a Son *F.* and two Daughters *E.* and *C.* afterwards *R. N.* dieth seised, *F.* being within Age, and afterwards *F.* dieth seised in Ward to the King within Age; and after his Death it is found by virtue of an Office by Writ, that *E.* and *C.* are his Sisters and next Heirs, and of full Age; and afterwards by another Office it is found by Commission, &c. that

M.

M. Son of the said *Alice*, one of the Sisters of the said *R. N.* and *J.* another Sister of the said *R. N.* Father of the said *F.* was Cousin and next Heir to the said *F.* and of full Age; upon which the Sisters of the said *F.* came into the Chancery, and had a *Scire facias* against the said *M.* Son of the said *Alice*, and the said *J.* &c. to shew wherefore they should not have Livery of the Lands as Heirs, &c. And that Writ of *Scire facias* was made returnable the *Monday*, which was the second Week of *Lent*; by which it appeareth, that the Writs which shall be sued in Chancery, may be returned there in the Vacation Time, out of Term; and upon the Return of that *Scire facias*, the said *M.* came and granted that he was not Heir, &c. whereupon the two Daughters *E.* and *C.* had Writ of Livery directed to the Escheator, reciting all the Matter, and reciting in the Writ, that the King had respited their Homage until a certain Day, commanding the Escheator that he make Partition betwixt them, and that he assign to each of them a Part of the Land which is holden of the King *in Capite*; which Writ shall be returned and inrolled in the Chancery; the which Writ is in the Register, *fol.* 316.

Partition and Livery after the Death of Tenant by the Curtesy.

B **I**F it be found by Office by Virtue of a Writ, that *B.* held the Manor of *B.* by the Curtesy of *England*, in the Right of *E.* who was his Wife, which Manor is holden of *P.* by Knight's Service; and it be farther found by the said Office, that *B.* is dead, and *M.* and *A.* are his next Cousins and Heirs, and one of them is within Age, and the other of full Age: Then he who is of full Age, shall have a Writ of Livery to the Escheator, that he take Security for the Payment of his Relief, and that he make Partition betwixt the two Heirs, *viz.* *M.* and *A.* in the Presence of him who is of full Age, and in the Presence of the *Prochein amies* of him who is within Age, and that he deliver Seisin of his Part to him who is of full Age, and that he retain in the King's Hand the Part of the other Sister. Which Writ shall be returned and inrolled in the Chancery, and that Writ appeareth in the Register, *fol.* 317.

And the like Writ is in the Register, where the King's Tenant dieth, one of his Daughters within Age, and the other of full Age, in the same *Folio* 317.

(a) *Partition and Livery for Lands in Socage.*

IF A Man holdeth Lands of *G.* in Socage, as of his Manor of *B.* which *G.* C
 and the Manor is in the Ward of the King for the Nonage of *G.* and also
 he holdeth other Lands of other Lords by other Services, and dieth, and hath
 Ant. 256. D. Issue two Daughters, whereof one is within Age, and the other of full Age;
 they shall have Livery out of the King's Hands, *sc.* the *Prochein amies* of the
 Heir within Age shall have *Livery cum exitibus*, and the other Daughter shall
 have *Livery sine exitibus*, and a special Writ shall be directed unto the Escheator
 in that Case, reciting the whole Matter, and how that the King hath taken
 Fealty of her who is of full Age, and delivered to her her Part, commanding
 the Escheator by the Writ, that he take Security of her of full Age for her
 Relief, and that he make Partition between the Daughters of the Socage
 Land; and that he deliver the Part of the younger unto her *Prochein amies*,
 with the Issues and Profits of that Part from the Death of the Ancestor; and
 that he intermeddle not with the Lands holden of the other Lords; which see
 in the Register, fol. 318.

[262.] **I**f the King's Tenant hath Issue three Daughters, and he giveth Part of his A
 Stamf. Pr. 53. Lands unto one of his Daughters in Frank-marriage, and one of the other
 two Daughters hath Issue within Age and dieth, and afterwards the Tenant in
 Frank-marriage dieth, his Heir of full Age, and then the King's Tenant
 dieth, and then by Office *virtute Brevis* it is found, that the Daughter of the
 King's Tenant, and the Issue of the two Daughters are Heirs to the King's
 Tenant, and that the Issue of one of the Daughters is within Age; and after-
 wards by another Office it is found, that the King's Tenant gave Part of his
 Lands to one of his Daughters in Frank-marriage, for which upon that Office
 found, the other Daughter, and the Issue of the second Daughter, who is
 within Age, have a *Scire facias* against the Issue of the Daughter who was ad-
 vanced in Frank-marriage, to shew at a certain Day in the Chancery wherefore
 the Lands, of which the King's Tenant died seised, &c. should not be deli-
 vered to them as Heirs only unto the King's Tenant; and if the Issue of her
 who was advanced in Frank-marriage, being warned by the *Scire facias*, and
 so returned warned by the Sheriff, maketh Default, or cannot shew Matter
 sufficient to maintain her Title; then thereupon a Writ of Livery shall be
 awarded to the Escheator, rehearsing how that the King hath taken Homage
 and Fealty of the eldest Daughter, and that he hath rendred to her her Part,
 commanding the Escheator, that he take Security of the eldest Sister to pay
 her Relief into the Exchequer, and that he make Partition in two equal Parts
 in the Presence of the Parties, if they will come, and that he deliver Seisin to
 the Sister of full Age of her Part, and that he retain the other Part in the
 King's Hands for the Nonage of the Daughter of the other Sister. See the
 Writ thereof in the Register, fol. 320.

(a) See a Partition repealed by Award of the
 King's Council on Examination of the Escheator,
 without making the Parcenors Parties. 27
 Ed. 3. 83.

See 42 Aff. 22. The Case of the Earl of
 Pembroke.

B If *A.* holdeth a Parcel of Lands in Socage of *B.* which *B.* is in Ward to the King, and also the said *A.* holdeth another Parcel of Lands of *C.* in Socage, who is also in Ward to the King for Nonage, and also the said *B.* holdeth other Lands of several other Lords by other Services, and afterwards the said *A.* hath Issue seven Daughters, and afterwards one of the Daughters hath Issue within Age and dieth, and then *A.* dieth, and all that Matter be found by Office, then upon that Office returned, they shall have a Writ to the Escheator, commanding him that he take Fealty of the six Daughters for their Parts, and for their Reliefs to be paid in the Exchequer, and that he make Partition of all the Lands into seven Parts in the Presence of the Parties, if they will be there, and that he deliver full Seisin to the six Sisters of their Parts, and that he keep in the King's Hands the Part of her who is within Age, until the King otherwise command him; and that he deliver the Lands and Tenements which are holden of the other Lords, which are assigned for the Part of her within Age, unto the *Prochein amie* of the Infant to whom the Inheritance cannot descend, and that he deliver the Issue and Profits of the Lands holden of other Lords, than of those Lords who are in the Custody of the King, to those who of Right ought to have them. And after that this Writ is awarded to the Escheator, if the Escheator be removed after that he hath made the Partition according to the Writ, and before the Return of the Writ, then the Sisters may sue forth a new Writ to the new Escheator, reciting the whole Matter, and how the Escheator was removed before he had executed the Command unto him, commanding the new Escheator, that if the Partition be not made, that he do all such Things as the other Escheator ought to have done, and retain in the King's Hands, &c.

C And then if the new Escheator, upon that new Writ, return unto the King in Chancery, that by Virtue of the said Writ he hath made Partition of seven Parts of those Lands, and that he hath retained in the King's Hands, the Part of her who is within Age, and that he hath delivered unto three of the Sisters their Parts, and that the other three Sisters did not come to take their Parts, so that they remain in the King's Hands; upon such Return the said three Sisters may come into the Chancery, and pray to have a Writ unto the Escheator, with the Transcript of the Partition to be inclosed therein, commanding him to take Security of them for their Reliefs, &c. and that he deliver to them their Parts appertaining unto them, according to the Partition made, retaining in the King's Hands the Part of her who is within Age, until he command to the contrary, and that he return the Writ, and what he hath done upon the same, under his Seal, fully and openly without Delay. See the Writ thereof in the Register, fol. 319.

And it appeareth by the Register, that if the King's Tenant hath Issue two Daughters, and one be within Age, and the other of full Age, and dieth, that she who is of full Age may sue unto the King to have the Custody of her Sister's Part during her Nonage, and to sue Livery of the other Moiety: And thereupon she shall have a special Writ unto the Escheator, rehearsing how the King hath taken her Homage, and hath assigned unto her the Moiety of the Lands, &c. which appertained unto her for her Part, and that he hath committed the Custody of the other Part unto her, during the Nonage of the Heir the other Coparcener, commanding the Escheator by the

Writ, that he take Security of her to pay her Relief into the Exchequer, and that he deliver Seisin of the Moiety unto the Heir of full Age, until the full Age of the other Coparcener within Age, with the Issues and Profits of the other Moiety from the Death of the Ancestor. And thereby it appeareth, [263.] that when the other Coparcener within Age cometh of full Age, they both shall sue forth a new Livery jointly. See the Register, fol. 320.

And it appeareth by the Register, that if a Man hath Lands in London in Fee, and hath Issue two Daughters, and leaseth the Lands for Life, and dieth, and afterwards the Tenant for Life dieth, the Daughters of full Age, and all the same be found by Office; the two Daughters shall sue forth a Writ of Livery for those Lands, because they are holden of the King in Burgage, and the Writ shall be directed to the Escheator, commanding him to make Partition of those Lands betwixt the Daughters. And if one Daughter be indebted to the King, then by the same Writ he shall command the Escheator, that he retain the Part of her who is indebted in the King's Hands, until he hath other Command, and that he deliver the other Part unto the other Daughter: Reciting the same Writ, that he hath taken Homage and Fealty of the other Daughter: And moreover, by the same Writ the Escheator shall be demanded, that he take Security of the other Daughter for the Relief of that Coparcener, if any be due, &c. and that he return the whole Matter into the Chancery under his Seal, &c.

And if the King's Tenant who holdeth of him *in Capite* in Fee dieth, and hath Issue three Daughters, his Heirs of full Age, and another Woman who holdeth in Dower other Lands for Term of her Life of the Assignment of her Husband, which Lands are also holden of the King *in Capite*, dieth, and the Reversion of those Lands are the Inheritance of the said Daughters; they shall have one Writ of Livery unto the Escheator for all those Lands, reciting the whole Matter, and how that he hath taken their Homage and Fealty, or that he hath respited the same till a certain Day, &c. and that he render to them their Parts, commanding the Escheator, that he take Security of them for to pay their Reliefs, &c. and that he make equal Partition between them in their Presence, if they will appear, and that he give full Seisin to each of them of their Parts; with such a Provision, that each of them shall have Part of that Rent which is so holden of the King *in Capite* for her Part, so that each of them be Tenant to the King, &c. And it appeareth by that Writ, that a Rent may be holden of the King by Knight's Service *in Capite*, as well as Lands. See the Register, fol. 318.

. *Writ de Dote assignanda.*

C THE Writ *de Dote assignanda* lieth where it is found by Office, that the King's Tenant was seized of Tenements in Fee or in Fee-tail the Day he died, &c. and held of the King *in Capite*; then the Wife may and ought to come into the Chancery, and there make Oath that she will not marry without the King's Licence: And thereupon the King may assign her Dower in the Chancery of those Manors and Lands, (a) and thereupon she shall have a Writ unto the Escheator where the Lands are, which shall be such:

The King to his Escheator in the County of B. greeting: Know you, that of the Lands and Tenements which were N.'s deceased, who held of us in Chief, and which, by reason of the Death of him the said N. are taken into our Hand, we have assigned to I. who was the Wife of the said N. the third Part of the Manors of T. and C. in the County of T. with the Appurtenances, and also a third Part of the Purparty which was his the said N.'s of the Court of the Liberty of the Honour of Winchester, and the View of Frank-pledge in the said County of T. to have for her Dower falling to her of the Manors and Purparty aforesaid, according to the Law and Custom of our Realm of England; and also by the Assent of Edward Prince of Wales, our most dear Son, to whom the Custody of the Manor of R. in the County of Buckingham, which to fifty Pounds by the Year, and the Manor of N. with the Appurtenances in the said County of B. which to ten Pounds by the Year extend, as is found by the Extents thereof made by our Command, returned into our Chancery; we have assigned to the aforesaid I. the said Manor of N. with the Appurtenances, for her Dower of the said Manors of R. and N. to have in Form aforesaid; and therefore we command you, that you deliver to her the said I. the said Manor of N. with the Appurtenances, to have for her Dower, as before is said Witness, &c.

D And when the Wife hath made her Oath in the Chancery, she may have a Writ of *Dote assignanda* to the Escheator, to assign her Dower; and the Writ shall recite, that she hath made her Oath in the Chancery, &c. But the Use is to make the Assignment of the Dower in the Chancery, and to award a Writ unto the Escheator, to deliver the Lands assigned unto her; and although the (b) King doth commit the Custody of the Land unto another, yet the King may assign Dower unto the Wife in Chancery, and she shall have a Writ unto the Escheator to deliver unto her that Dower, as appeareth by the Register. And the Writ shall be such:

The King to his Escheator, &c. greeting: Whereas amongst other Lands and Tenements by us assigned to I. who was the Wife of N. deceased, (who held of us

(a) See *Rot. Finium*, 1 Ed. 1. M. 21. a Command to the Escheator to seize all the Lands whereof *A.* was seized, *ac etiam quod Margeria quæ fuit uxor præa' A. (20 Merc' de Terra) de Terris & Tenementis prædictis assignari faciat donec Rationabilem Dotem ipsam contingent secundum*

Legem & consuetudinem sibi fecerit assignari. Et Rot. Claus. 2 Ed. 1. M. 15. accordant.

(b) See *Kelway* 133. it seems the Committee cannot assign Dower; *Quære tamen*, if it be not good until the Heir sues his Livery.

in Chief) of the Lands and Tenements which were the said N.'s for Dower, we have assigned to her the said I. Part of the Manor of Grouby with the Appurtenances in the County aforesaid, and also a third Part of the Purparty which was his the said N.'s of the Court of the Liberty of the Honour of W. and the View of Frank-pledge in the same County, to have for Dower in Form aforesaid: We command you, that you cause to be assigned and delivered to her the said I. (whose Oath we have received that she will not marry without our Licence) the said third Parts in your Bailiwick, in the Presence of the Guardian of the said Manor and third Part, to be warned by you, if he or his Attorney will be present in this Behalf, to have in Dower as before is said; and when that Assignment, &c. Witness, &c. And if the Wife after the Death of the Husband doth come into Chancery, and prayeth her Dower there; the King may grant a Writ unto the Escheator, commanding him to take Security of the Wife, that she do not marry herself, and that the Escheator do assign Dower unto her. And the Writ shall be such:

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The King to his Escheator, &c. We command you, that having taken the Oath of M. (who was the Wife of W. deceased, who held of us in Chief) that she will not marry herself without our Licence, you cause to be assigned to her reasonable Dower of all the Lands and Tenements which the said W. some time her Husband, held in his Demesne as of Fee, in your Bailiwick, on the Day when he died, and which after the Death of the said W. were taken into our Hand, and in our Hand so remain, according to the Law and Custom of our Realm of England falling to her, by the Extent thereof made, or by other, if it shall be necessary again to be made, in the Presence of B. to be warned thereof by you, if he will be present; and when you shall have so made that Assignment, send it under your Seal distinctly and openly, that we may cause it to be inrolled in the Rolls of our Chancery, as the Custom is. Witness, &c.

And if a Man dieth seised of Lands which are holden by Knight's Service, A of any Manor, or otherwise, as in any Abbey, Bishoprick or Priory, or such as are in the King's Hands by Reason of the Vacancy of the Abbey or Bishoprick, &c. then if the Wife will have Dower, she ought to sue in the Chancery to have such Writ directed unto the Escheator, to assign her Dower; but there the Wife shall not make Oath, that she shall not marry without the King's Licence, as appeareth by the Writ which is such:

The King, &c. We command you, that, &c. to A. who was the Wife of B. deceased, who held (of the Abbey of Peterborough lately void, and being in our Hand) by Knight's Service, her reasonable Dower of all the Lands and Tenements, &c. which the said B. her Husband held of the Abbey aforesaid, in your Bailiwick, on the Day when he died, and which, after the Death of him the said B. are in our Hand, &c. (as above.)

Ad the like Writ may be sued by the Wife for Lands, which her Husband B held by Knight's Service of the Manor of him, who is in the Ward to the King by Reason of his Nonage; but there she shall not make Oath, that she will not marry herself, no more than in the Case before.

And the King may assign Lands in Dower in the Chancery, rendring Rent yearly to the King, &c. because the Lands do exceed the very Value of the third Part of all the Tenements whereof she ought to have Dower. And then upon

upon that Assignment made in Chancery she shall have and sue such Writ to the Escheator.

The King to his Escheator, &c. Know you, That of the Lands and Tenements which were E.'s of B. deceased, who held of us in Chief; and which by Reason of the Death of the said E. are taken into our Hand, we have assigned to M. who was the Wife of the said E. the Manors underwritten, to wit, the Manors of B. and C. &c. with the Appurtenances in your County, which are extended to one hundred Pounds by the Year, to have for Dower falling to her of the Lands and Tenements aforesaid, according to the Law and Custom of our Realm of England, rendering thereof to us yearly at our Exchequer, so much as it exceeds the Dower aforesaid; and therefore we command you, that you deliver to her the said M. the said Manors with the Appurtenances, to have to her for her Dower in Form aforesaid. Witness, &c.

C And if the Wife be impotent, so as she cannot come into the Chancery to make Oath, and to demand her Dower, then she may sue a special Writ directed to certain Persons to take her Oath, and to receive Attorney for the Wife to sue for her Dower in the Chancery, &c. and the Writ appeareth in the Register. *fol.* 298.

D And if the King make Livery unto the Heir at his full Age, saving unto the Wife her Dower to be assigned by the King; then if the Wife will demand Dower, she ought for to sue for the same in the Chancery; and if she do demand her Dower there, then shall issue a special Writ unto the Escheator, that he warn the Heir for to be in Chancery at a certain Day, &c. and there the Wife shall have the same Day to receive her Dower, &c. And the Writ which shall issue against the Heir shall be such:

The King to his Escheator, &c. Whereas Lord Edward lately King of England our Father, on the twentieth Day of January last passed, received the Homage of T. of B. the Son and Heir of T. of B. deceased, for all the Lands and Tenements which the same T. his Father held on the Day when he died, of our said Father, &c. and he rendred those Lands and Tenements, and commanded them to be delivered to him, saving the Right of every one, and saving to M. who was the Wife of the said T. her reasonable Dower falling to her of the Lands and Tenements aforesaid, according to the Law and Custom of our Realm of England, and to be assigned to her as the Custom is, as appears to us by the Inspection of the Rolls of the Chancery of our said Father; and the said M. hath besought us, that we would cause to be assigned to her, her Dower falling to her of the Lands and Tenements aforesaid, according to the Law and Custom of our Realm of England; wherefore we gave Day to the said M. that she be in our Chancery on the Morrow of All Souls, &c. wherefore, &c. to receive her Dower aforesaid: We command you that you give Notice to the said T. that at the said Day he may be present at the Assignment of the Dower aforesaid, if it shall seem to him expedient; and have there the Names, &c. and this Writ. Witness, &c.

But if the King maketh Livery unto the Heir by his Writ directed to the Escheator, by which Writ he commandeth his Escheator to deliver unto him Seisin of all his Lands, &c. saving the Right of every one; and he putteth not in the Writ these Words, saving to M. who was the Wife, &c. her reasonable Dower, falling to her of the Lands and Tenements, &c. and by us to be assigned:

Then

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Then in that Case the Wife ought to sue her Writ of Dowry against the Heir, if she will demand Dower of those Lands, because the King made Livery generally of Lands by his Writ, without any Reservation of Dower to be assigned by him, &c.

And if the King make a Reservation of Dower to be assigned by him by his Writ of Livery which is directed to the Escheator, if the Wife never demand Dower, or if she hath Dower assigned unto her by the King in Chancery; yet after the Assignment made by the King, the Reversion thereof is in the Heir, and he shall not sue Livery of that Reversion after the Death of the Tenant in Dower, because the Writ of Livery doth not reserve any Thing to the King, but Assignment of Dower to the Wife; but the Writ doth command the Escheator to deliver Seisin of all the Land, and that the Escheator doth, and by that the Livery of all the Land passeth from the King; and therefore it followeth, that when the Wife is assigned her Dower by the King in Chancery, that yet the Reversion doth remain in the Heir, &c. for which he shall not sue a new Livery of that Reversion after the Death of the Tenant in Dower, &c. *Tamen quere* of that Case.

If the Land assigned to the Wife be evicted, she shall have a Scire facias to re-seize the Land, and shall be new endowed. 43 Aff. 32. Br. Dower 65.

(a) And if the Wife be assigned Dower in the Chancery, and afterward it is furnished by the Heir, or by another for the King, that the Land assigned to the Wife is not extended to the very Value, but that the Land assigned to her is much more in Value than it is extended at, and that the Lands which remain in the King's Hands are extended to the very Value, &c. then the King shall send a Writ to the Escheator to make a new Extent: And upon that Writ returned, if it be found that the Land assigned to the Wife is of greater Value, &c. then upon Return thereof a *Scire facias* shall be awarded against the Wife, to shew Cause wherefore she shall not be anew endowed, &c. and if she be warned, and maketh Default, it seemeth she shall be new endowed for her Default; or if she appear, and cannot say any Thing contrary to that new Extent, she shall be endowed anew, so as Part of the Land assigned to her, shall be taken from her at the King's Pleasure; or (b) the King may make a new Assignment of all that she had in Dower, if he pleaseth, and a new Writ shall be to the Sheriff to deliver her Seisin thereof so newly assigned to her: *Quere* the Use of this Point.

Ant. 274.

And if the Wife make Oath, that she will not marry herself without the King's Licence, and is endowed upon the same, &c. and afterwards she marieth without Licence, &c. then the King shall send a Writ to the Escheator, that he re-seize all the Lands which she holdeth in Dower, as appeareth by the Register, and not all the other Lands which she or her Husband had in their own Right; and the Writ is such:

(a) So if the Wife's Dower be evicted by a Title Paramount on the Record carried into Chancery, whereby she was evicted, she may have a *Scire facias* to re-seize the Land, and to be newly endowed of the Residue tho' it be after Livery made to the Heir. 43 Aff. 32.

(b) See also that if Dower be assigned to the Wife within Age in Chancery, and afterward Livery is made to the Heir, she may have a Writ of Dower of the Residue. 18 Ed. 3. 29.

The King to his Escheator, &c. Whereas A. who was the Wife of I. of B. deceased, who held of us in Chief, who lately made a corporal Oath that she would not marry herself without our Licence, hath already married herself to W. of P. not having obtained our Licence for this Purpose, as we have received Information; We being unwilling that such Contempt should pass unpunished, and also willing to see that we suffer no Damage in this Behalf, command you, that if it is so, then without Delay take into our Hand all the Lands and Tenements which the said W. and A. hold for the Dowry of her the said A. of the Inheritance of the said I. in your Bailiwick, so that you may answer to us for the Issues forth coming thereof at our Exchequer, until we shall be satisfied for the Forfeiture to us thereof belonging, or we shall be moved to give you other Matter in Charge thereupon. Witnesses, &c.

Writ de Levari facias.

THE Writ of *Levari facias* is a Writ which shall issue out of the Record, and shall issue sometimes out of the Chancery, and sometimes out of other Courts where the Record is. As if a Man be bounden in a Recognizance in the Chancery in twenty Pounds, to be paid at the Feast of Saint Michael next following, then if he do not pay the Money at the Day, a *Levari facias* shall be directed to the Sheriff, that he levy the Sum on his Goods and Chattels; and the Form of the Writ is such:

E The King to the Sheriff, &c. Because I. the Son of B. ought to have paid to M. of B. twenty Pounds on the Feast of Saint Michael in the Year of our Reign, &c. as (a) appears to us by the Inspection of the Rolls of our Chancery, and hath not yet paid the same to him, as he says; We command you, that without Delay you cause the said Money to be levied of the Lands and Chattels of him the said I. in your Bailiwick, so that you may have the same in our Chancery on the Morrow of the Nativity of Saint John the Baptist next coming, wherefoever it shall then be, to be there delivered to the said M. and this you may by no means omit: And have there this Writ, &c.

F And he may have an *Alias* and a *Pluries*, *Vel causam nobis significes*, directed to the Sheriff; and if he will not return the Writ, he shall have an Attachment against the Sheriff. And this Writ is given by the Common Law before the Statute of (b) *West. 2.* which gave the Writ of *Elegit*. But this Writ

(a) If the Record be sent *coram Rege*, and there is a Writ of *Scire facias* to execute it, the Writ shall be, *Sicut constat nobis per Record' quod in Carcellaria nostra venire fecimus.* 17 Ed. 3. Brief 824.

(b) See accordant *per Trew.* 8 Ed. 3. 44. but adjudged *contr. viz.* That if the Year be passed after the Date of the Recognizance, though it be within the Year of the Day for Payment, he is put to a *Scire facias*. For *per Ston.* the Words

of the Stat. *West. 2. Si recens sit Recognitio*, do relate to the Day of making the Recognizance, and not to the Day of Payment; yet see 8 Co. — *contr. ideo quare.* 21 Ed. 3. 22. but clearly, if the Day of Payment be limited by Defeasance to be ten Years after, there after the ten Years, he must sue a *Scire facias*. (Note; The Defeasance is out of the Record) *Vide infra* 266. C. And Note 16 Ed. 3. *Scire facias* 41.

ought to be sued within the Year after the Day of Payment to be made by the Recognisance; for after the Year and Day of Payment to be made, if he do not sue forth this Writ, then he ought to have a Writ of Debt before the Statute of *West. 2.* which gave the *Scire facias* against him who was so bounden by Recognisance; but now by that Statute he shall have the Writ of *Scire facias* to make him come at a certain Day into the Chancery, to shew what he can say why he ought not to pay the Sum, &c. And if the Sheriff upon the *Levari facias* return, that he hath levied ten Pounds of the Sum, &c. which he hath delivered to the Party, &c. then upon that Return he who ought for to have the Money, may sue forth a *Sicut alias levari facias* directed to the Sheriff to levy the Residue of the Sum; which Writ shall be such:

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The King to the Sheriff, &c. Because T. the Abbot of B. ought to have paid to R. one hundred Pounds, &c. on the Feast of, &c. in the - Year, &c. as appears to us, &c. and did not pay the same, &c. wherefore we commanded you, that without Delay you should cause the said Money to be levied of the Lands and Chattels of him the said Abbot in your Bailiwick, so that you might have the same in our Chancery, &c. wheresoever, &c. to be there delivered to the said R. and you returned to us, that you have taken into your Hand at divers Times, of the Goods and Chattels of the said Abbot to the Value of, &c. which you levied thereof, and have caused the said R. to have; We command you, that without Delay you cause to be levied the Residue of the said Debt of the Lands and Chattels of him the said Abbot in your Bailiwick, so that you may have it before us from the Day of, &c. wheresoever, &c. to be there delivered to the said R. and this you may by no means omit, &c. Witnesses, &c.

And if a Parson be bounden in a Recognisance in Chancery in two hundred Pounds, to pay at a certain Day, &c. and he doth not pay the same at the Day, then the Recognisee shall have a *Levari facias* directed to the Bishop, or a *Levari facias* directed to divers Bishops, to levy the Money of his spiritual Goods; and the Writ shall be such:

12 H. 4. 17.
13 H. 4. 17.

The King to the venerable Father in Christ, &c. greeting: Because I. Parson of the Church of S. in the County of H. of your Diocese, and T. of L. Parson of the Church of M. in the County of B. in the Diocese of Lincoln, ought to have paid to Master F. two hundred Pounds on the Feast of All Saints, &c. in the Year, &c. as appears, &c. as he saith; We command you, that without Delay you cause to be levied one hundred and fifty Marks of the said Sum, of the Goods and Chattels of him the said I. in your said Diocese, so that we may have the same one hundred and twenty Marks in our Chancery, &c. wheresoever, &c. to be there delivered to the said F. and this you may by no means omit: And have there this Writ. We have also commanded W. Bishop of Lincoln, that he cause to be levied one hundred and fifty Marks, &c. the Residue of the Ecclesiastical Goods of him the said T. in the said Diocese, in Form aforesaid. Witnesses, &c.

But if the Parson hath Lands of his own Purchase, he may have a Writ to the Sheriff to levy the same, &c. But now by the Statute of *West. 2. cap. 18.* he may sue forth an *Elegit* upon the Recognisance made in the Chancery, directed to the Sheriff, to have Execution of the Moiety of his Lands, and of all his Goods and Chattels, except his Beasts of the Plough, and to deliver them to the Heir for his Maintenance; and the Form of the Writ is such:

The

The King to the Sheriff, &c. Because R. on the 11th Day of February last paid in our Chancery acknowledged himself to owe to N. twenty Pounds, which he ought to have paid to him on the Feast of, &c. then next following, as appears by, &c. of our Chancery, and hath not yet paid the same to him, as he saith; and the same N. according to the Statute thereof set forth, hath chosen to be delivered to him for the said twenty Pounds, all the Chattels and the Moiety of the Land of him the said R. to be holden according to the Form of the said Statute, by a reasonable Appraisement thereof (except the Oxen and Beasts of the Plough) to be made in the Presence of the said R. to be warned thereof by you, if he will be present, cause the same to be delivered to the said N. or his certain Attorney, and if those Chattels are not of sufficient Value of the said twenty Pounds, then cause those Chattels, so of less Value, by a reasonable Appraisement, and also the Moiety of the Land of him the said R. in your Bailiwick by Extent, in like Manner to be made in your Presence in Form aforesaid, to be delivered to the said N. or his said Attorney, to be holden as his Freehold, until the said Debt shall be thereof levied, and of that which you shall have done thereupon, make it appear distinctly and openly to us in our said Chancery (such a Day) wheresoever it shall then be, under your Seal; and have there this Writ. *Witness, &c.*

- C (a) And after the Year and the Day of Payment passed of the Recogni- Vide 265. G.
sance, the Recognisee ought for to sue a *Scire facias* against the Recognisor, to shew what he can say why the Recognisee should not have Execution; and if he be returned upon that Writ warned by the Sheriff, if he do not appear, or if he do appear, and cannot say any Thing wherefore he should not have Execution, then the Recognisee may sue forth the Writ of *Elegit* to have Execution of all his Goods, and of the Moiety of his Lands: And if the She-

(a) Note; If the Party to a Judgment or Recognition be returned dead, a *Scire facias* shall issue first against the Executors, and if he has no Executors, or if they have not Assets, then a *Scire facias* shall go against the Heir, 7 H. 4. 30. 19 R. 2. Execution 163. and by ancient Usage, until the Heir was returned dead, or *Nihil*, no *Scire facias* went against the Tertenants. 18 Ed. 2. Execution 142. But he may have a *Scire facias* against the Executors, Heirs and Tertenants in the same Writ, if he will. 2 Co. 12. Sir William Herbert's Case. And as to the Heir, 1. He must be said to have Lands in Fee simple by Descent, otherwise the *Scire facias* will be but as against a Tertenant. 27 H. 6. Execution 135. 2. It ought to be *Tenentibus Terrar' quæ fuer'* the Conuees the Day of the Recogn', or afterwards. 46 Ed. 3. Brief 605. 3. In a *Scire facias* upon a Recognition in C. B. he ought to name all the Tertenants at his Peril. (*Quære.*) But it is otherwise, *alibi*. 46 Ed. 3. Brief 605. 20 Ed. *Scire facias* 121. 17 Ed. 2. Execution 139, &c. But now it seems he may have a *Scire facias* against the Tertenants generally without naming them, and without warn-

ing the Heir or Executor, except the Heir has Lands. *Raft. Entr.* 446. *Dyer* 208. *Regist.* 57. 7 R. 2. Execution 46, 406.

Scire facias C. Tenenti Terrarum quæ fuer' prædict' A. the Conufor, &c. quare prædict' summa de — de Terris & Catallis suis levari, &c. And the Writ adjudged good, though the Words *& Catallis* had not been therein. 30 Ed. 3. 23. It seems he shall not have a *Scire facias* against the Tertenants, till a *Scire facias* sued against the Executors, and *Nihil* returned. 7 H. 4. 31. 19 R. 2. Execution 163. And Note; A *Scire facias* and a *Testatum* in another County, amount to a *Scire facias*. 18 H. 6. 17. Execution 3. And if any other be Tertenant, who is not returned warned, the *Scire facias* shall be against him, and so he may delay Execution. 41 Ed. 3. Execution 37. And if the one comes and pleads, but the other makes Default, Judgment shall not be given on the Default, till the Plea be determined. 6 Ed. 3. 15. Execution 103. And if on the Issue it be found against the Tenant, yet no Land shall be put in Execution, but only the Land of the Conuee in his Hands. 33 Ed. 3. Execution 162. See *Raft.* 64.

riff return the *Elegit*, that the Recognisor hath made a Feoffment in Fee of Part of the Lands to divers Tenants, &c. and that he hath infeoffed the King of the Residue; then upon that Return the Lands whereof the King is seised by that Feoffment are discharged. But he may sue a *Scire facias* to warn the other Tenants to appear at a certain Day, to shew Cause wherefore the said Lands shall not be delivered in Execution; and if they be warned, and do not appear, or if they come, and cannot say any Thing, &c. to bar the Execution, then the Recognisee shall have Execution against them of those Lands by Writ of *Elegit*, &c. but he shall have the *Elegit* before that he sueth the *Scire facias* against those Tenants.

And if a Man be bounden by Recognisance in the Chancery, and the Recognisor hath certain Indentures of Defeasance; then, if the Recognisee will sue Execution upon the Recognisance, the Recognisor may come into the Chancery, and shew the Indentures of the Defeasance, and that he is ready to perform them, and thereupon he shall have a *Scire facias* against the Recognisee returnable at a certain Day in the Chancery; and in the same Writ he shall have a *Supersedeas* directed to the Sheriff, that in the mean time he do not Execution by Virtue of the Writ sued forth by the Recognisee. And if the Sheriff upon any such Writ return, that he hath sent to the Bailiff of the Liberty to do Execution, which Bailiff hath returned him no Answer; then upon that Return he shall (a) have a new Writ directed to the Sheriff, with a *Non omittas* therein, that he enter the Franchise and do Execution, &c.

And a Man may sue Execution by *Scire facias* upon a Recognisance made in the Time of another King in the Chancery, or in the Common Pleas, or in any Court of Record. And the King may by his Commission give Authority to one to receive a Recognisance of another Man, and to return the same into the Chancery; and by Virtue of that Commission, if a Man doth before the Commissioners acknowledge a Debt to be paid to another at a certain Day, &c. and certify the same into the Chancery with the Commission, &c. then upon the Certificate thereof, if he do not pay the Debt at the Day, he shall have an *Elegit* upon the Conusance so taken, as well as if it were taken in the Chancery; and the Form of the Commission is such:

The King to his beloved and faithful R. of M. greeting: Know you, that we have given you Power of receiving the Recognisance which I. of H. shall be willing to make before you to G. of T. of any Sum of Money whatsoever; And therefore we command you, that when you shall have received that Recognisance, you do certify us in our Chancery, under your Seal distinctly and openly, thereof, and of the Day or Days of Payment, and also of the Day of taking the same, sending to us this Writ. Witness, &c.

And there is another Form, thus: *The King, &c. Know you, that we have given you Power of receiving for this Time, in our Name, the Recognisance which I. of T. shall be willing to make before you of any Debt whatsoever; And therefore we command you, that when you shall have received that Recognisance, you certify us, &c. thereof under your Seal distinctly and openly, &c.*

(a) So it was done where Beasts had been detained, and no Delivery made to the Plaintiff. *Rast. Entr.* 546. See 12 *Ed.* 3. *Scire facias* 117. 2 *Ed.* 3. *Execution* 129. 14 *Ed.* 3. *Execution* 73.

And by that Commission he hath general Authority to take Recognizance of any Man who will acknowledge any Debt before him to any Person whatsoever, &c.

B If a Man be bounden in Recognizance in one hundred Pounds, to pay at See before five several Days twenty Pounds, then immediately after the first Day of Payment is past, he may sue an *Elegit* for twenty Pounds, and at the second Day he may sue another *Elegit* or *Levari facias* of other twenty Pounds, and so of all the twenty Pounds, every Day of Payment, and he shall have such Writ of *Elegit* for the Payment that shall be made at that Day, and shall not stay his Suit till all the Days of Payment are past.

So note, that *Capias ad satisfaciend.* lieth not upon a Recognizance. 34 H. 6. 45. 48 Ed. 3. 14. 10 Ed. 3. Execution 137.

V. 38 Ed. 3. 12. Br. Execution 42.

C (a) And if two be bound in Recognizance in Chancery, to wit, Every one of them for the whole acknowledged himself to owe, &c. he may sue several *Scire facias* against them to have the Money levied of their Goods and Lands, &c.

D If a Man be bound in a Recognizance in Chancery, or other Court of Record, and afterwards the Recognisee dieth, his Executors may sue forth an *Elegit* to have Execution of the Lands of the Recognisor: And if the Sheriff return that the Recognisor is dead, then the Executors shall sue a special *Scire facias* against the Heir of the Recognisor, and against those who are Tenants of the Lands which he had at the Day of the Recognizance made; and that Writ of *Scire facias* shall recite and shew, that the Executors who sue the Writ have elected to have the Moiety of the Lands which the Recognisee had at the making of the Recognizance; and the Form of the Writ is,

The King to the Sheriff, &c. Whereas I. of W. (such a Day and Year) &c. in our Chancery acknowledged himself to owe to N. lately Duke of Lancaster, one hundred Pounds, which he ought to have paid to him on the Feast of, &c. then next coming, as appears, &c. and hath not yet paid the same to him, as it is said, and W. B. and C. Executors of the said late Duke deceased, according to the Statute thereof set forth have chosen to be delivered to them for the said one hundred Pounds, all the Chattels, and the Moiety of the Land of him the said I. of W. to be holden according to the Form of the Statute aforesaid; Wherefore we commanded you, that you should give Notice to the said I. of W. that he should be in our Chancery (such a Day) next following, wheresoever, &c. to shew if he had or knew any Thing to say for himself, why all his Chattels and the Moiety of his Land ought not to be delivered to the said Executors for the said one hundred Pounds, according to the Form of the Statute aforesaid; and you have returned to us, that the said I. of W. is dead: We command you, that you give Notice to the Heir of him the said I. of W. and also to the Tenants of the Land which was his the said I.'s of W. on the Day of the Recognizance aforesaid, that they be in our Chancery, &c. next coming, wheresoever, &c. to shew if they have or know any Thing to say for themselves, why the Moiety of the Land which they hold of the Land aforesaid, ought not to be delivered to the said Executors for the said one hundred Pounds, according to the Form of the Statute aforesaid; and have there the Names of those by whom, &c. Witness, &c.

(a) Note; If the one be in by Descent, and within Age, Execution shall tarry against all. 24 Ed. 3. 56. 29 Aff. 37. and the others in a *Scire facias* against them may shew this. 29 Ed.

3. 39. adjudged, and affirmed in Error, where the Conusor died, his Heir being within Age, and the others warned by *Scire facias*.

14 A. 7. 16.
15 A. 7. 16.

And thereby appeareth, that if a Man be bounden in a Recognisance, &c. although that the Recognisee dieth, yet his Executors cannot sue forth an *Elegit* to have Execution of the Recognisance within the Year after the Day of Payment, without suing forth a *Scire facias* against the Recognisor, &c. But against the Heir of the Recognisor or the Tertenants, the Recognisee or his Executors ought to sue forth a *Scire facias*, &c. otherwise if they be ousted, &c. by such Execution of their Lands, they shall have an Assise of Novel Disseisin, &c.

Writ de Idemp'itate nominis.

THE Writ de *Idemp'itate nominis* lieth, where a Man is sued in a personal E
Action, and upon the *Capias* or *Exigent* awarded, another Man who beareth the same Name, is arrested by Force of the Writ, then he who is so arrested shall sue forth this Writ of *Idemp'itate nominis*; and this Writ shall be directed sometimes to the Escheator, if he or his Goods be arrested by him, or unto the Sheriff, if he be vexed or molested by him; and the Form of the Writ is such:

[268.] (a) *The King to his beloved I. of S. his Escheator in the County of Lincoln, greeting: Whereas lately (as we have received Information) I. of R. of London, Taverner, now deceased (as it is said) for that he came not before our Justices of*

(a) *Note*; In the Case of *Wilson* and *Stubbs*, it was resolved, that if in a Writ against *J. S. J. S. the elder* is taken after Judgment, it shall be intended *J. S. the elder*: And yet after Judgment *J. S. the younger*, if taken, cannot have an *Idemp'itate nominis*, but false Imprisonment; but see the Precedents *contra*, viz. *P. 36 H. 6. Rot. 48. John Skey's Case, M. 20 H. 7. Rot. 136. Fuller's Case. See 5 Ed. 4. 48. otherwise if it was a Capias utlagatum*, for there the King is interested. *20 Ed. 3. Brief 683.*

What shall be said the same Name, or not. If *J. de D.* be outlawed, and *J. D.* taken, he shall not have an *Idemp' nominis*, but *Trespas*; *per Culpeper*; and see there a Writ brought against *J. de D.* and Process continued against *J. D.* and a Protection purchased by *J. D.* the Process shall be amended by the Statute *14 Ed. 3.* but the Protection was not allowed *licet constabat esse eandem Personam*; but otherwise had the Protection been purchased before the Writ. *11 H. 4. 70.*

If a Writ be against *J. G.* and the Sheriff takes *J. C.* he shall not have an *Idemp' nominis*; but if a Writ comes against *J. G. de B.* and the Sheriff takes *J. G. de C.* he shall have it. *1 H. 5. 5. b.* and by *Litt.* he may have *Trespas*, if he will. *2 Ed. 4. 7.*

Note well; If *J. C. Butcher*, be outlawed, and *J. C. Husbandman*, is taken by *Capias utlagatum*, he shall be discharged by Plea; for it

affirms the Outlawry good against *J. C. Butcher*; but if *Trespas* or Debt be brought against *J. C. de D. Butcher*, and there comes *J. C. de B. Husbandman*, and appears and pleads, and he is outlawed after Judgment: Now if he be taken he shall not avoid it by saying, that *J. C. de B. Butcher*, against whom the Action was brought, and *J. C. de B. Husbandman*, who now appears, are divers Persons, and that he is not the same Person against whom the Original was purchased; but he shall say further, that he did never appear upon that Original; for if he has appeared and pleaded, he is as well liable, as if he were the same Person. But by *Passon*, he shall not have such an Issue in Avoidance of a Record, no more than in Avoidance of a Fine levied in another Name; I shall not say I am another Person, or that I never appeared. *19 H. 6. 58.* And it seems without such special Shewing, he shall not come and say, that he is not the same Party, or that he did not appear, without shewing that the other of the same Name did. *Quare. 2.* It seems that the other may say, that he whom he alleges did never appear. See *10 Ed. 4. 16. 2 H. 6. 19.* where one came in by *Capias pro Fine*, and said that he never did appear, &c. and it was not allowed; but he afterwards shewed, that another of the same Name did appear, *absque hoc*, that he himself did ever appear; and it was held good. *22 H. 6. 18.*

the Bench to answer to R. for the Time wherein he was Receiver of the Money of him the said R. was put in Exigent in our Husting of London to be outlawed, and for that Reason was outlawed on Monday next after the Feast of Saint Peter in the Chair, in the tenth Year of our Reign; and now we understand on the Behalf of I. of R. of London, Baker, that although he is not the same I. of R. who was outlawed at the Suit of him the said R. neither have any Goods and Chattels, which were the same outlawed Person's, come to his Hands; nevertheless you, because of the Identity of such Name and Surname of I. of R. pretending him the said I. of R. of London, Baker, to be the same I. of R. of London, Taverner, who was so outlawed, intend to seize into our Hand the Goods and Chattels of the same I. of R. of London, Baker, by Colour of the said Writ to take into our Hand of the Goods and Chattels which the said I. of R. of London, Taverner, had in your Bailiwick on the Day of the Proclamation of the said Outlawry, and many Ways unjustly disquiet him upon that Occasion, to the great Damage and Grievance of him the said I. of R. of London, Baker; whereupon he hath besought us for a Remedy to be provided for him by us; And because we will not that he the said I. of R. of London, Baker, be unduly aggrieved, we command you, that if by Inquisition or other Means it shall lawfully appear to you, that the said I. of R. of London, Baker, is not the same I. of R. of L. Taverner, who was so outlawed, nor that any Goods or Chattels which were his the said outlawed Person's on the Day of Proclamation of the said Outlawry, came to his Hands, as is said, then wholly surcease the taking of the Goods and Chattels of the said I. of R. of L. Baker: Provided always, that you answer to us for all the Goods and Chattels which the said I. of R. of L. Taverner, had in your Bailiwick on the Day of Proclamation of the Outlawry aforesaid (if any there were) as it is just. Witness, &c.

A And so if a Man be distrained by Process out of the Exchequer for to account, &c. for another Person who hath the same Name which he hath, then he shall sue that Writ to the Barons of the Exchequer and to the Treasurer; and the Writ shall be such:

The King to his Treasurer and Barons of the Exchequer, greeting: J. Clerke of N. hath shewed unto us, that whereas one J. Clerke, on the Day when he died, was bounden in a certain Account to be rendred to us of the Issues of the Passage of Green Castle, which said J. Clerke is dead, and was called, while he lived, J. Clerke of A. as it is said; and because the said J. Clerke of N. hath the same Name and Surname as the said J. Clerke of A. you unjustly cause him many Ways to be disquieted, and to render to us an Account of the Issues aforesaid, as we have received Information; whereupon the said J. Clerke of N. hath besought us, that we will assist him with a Remedy in this Behalf; We, as well for ourselves as for the same J. Clerke, willing to be done that which shall be just, command you, that if by any Memoranda of the said Exchequer, or by Inquisition thereof (if it shall be necessary) to be taken, you shall find that he the said J. C. of A. had our Commission of that Office, and received the Issues thereof by virtue of such our Commission, or in other Manner, and that he the said J. Clerke of N. had not such our Commission, nor in any thing intermeddled therewith, and that he the said J. Clerke of N. because of the (a) Identity of his Name and Surname, and for no other Cause,

(a) Note; The Idemptity here is of both Names; and see *Dyer* 5. That it does not lie of two Names of Baptism, but only of Surnames.

was impeached before you, then cause him the said J. Clerke of N. to be discharged and quiet of rendering to us an Account of the Issues aforesaid at the same Exchequer (a), as it shall be just, making due Process against the said J. C. of A. if he be living, or against his Heirs, Executors or the Tenants of the Lands and Tenements of him the said J. C. of A. if he shall be dead, as the Law requires. Witness, &c.

27 H. 8. 1. And if a Man be taken by a *Capias utlagatum*, he may sue forth a Writ de R

27 Ed. 3. 9. *Idemptitate nominis* in the Chancery directed to the Justices of the Common Pleas, if the Process be sued there, or unto the Justices of the King's Bench, if the Process be there, commanding them to make Inquiry, &c. as aforesaid, &c. so as this Writ seemeth but as a Commission to make Inquiry, and to know the Truth; and upon that Writ directed to the Justices, they shall award a Writ unto the Sheriff to (b) make the Inquiry, &c. but if a Man be outlawed in the Common Pleas, and taken by *Capias*, he may come into the Common Pleas and pray a Writ of Inquiry, whether he be the same Person, without suing the Writ *de Idemptitate nominis*.

27 H. 8. 1.
24 Ed. 3.
Br. 271.

And if an *Exigent* be to be awarded against one, if one who hath the same Name come, and saith that he is ready to answer, then the Plaintiff (c) may say that he is not the same Person, and then the Plaintiff shall put a Diversity of the Names, and the same shall be entred, and then the *Exigent* shall be awarded according to that Difference which the Plaintiff hath made.

14 H. 4. 27.

9 H. 4. 3. (d) At the *Exigent* returned the Defendant appeareth by *Supersedeas*, and the Plaintiff saith, that he that appeareth is not the same Person: And the Opinion of *Hanke* was, that he shall be put to his *Idemptitate nominis*, and shall not that Way avoid the Outlawry.

9 H. 4. 3.

And if an *Exigent* be to be awarded upon an Indictment, if one cometh and saith, that he hath the same Name as he against whom the Process upon the Indictment is awarded, and prayeth that the King's Attorney may put a Difference of their Names; the same shall not be done, for that should change the Indictment, because the Process ought to be made according to the Indictment; and if he be grieved by the Process, he must sue forth the Writ *de Idemptitate nominis*, and shall not have other Remedy, &c. And he may have that Writ to the Justices of the Peace, if they award Process of Utlagary upon Indictments taken before them, and also to the Justices of Gaol-delivery, as appeareth by (e) the Register, fol. 195, 196.

[269.]

(a) So Note; The Tertenants are charged to account, and the Land is charged, although that no Judgment was given *pro Rege*, viz. in *Defectu Executionis* J. C. de D. See *Dyer* 225. Sir *Will. St. Loes*'s Case.

(b) Or alledges that he is named J. S. and not J. R. as the Writ suppoles; and thereupon he shall have a *Scire facias* against the Plaintiff in the Suit, &c. See 1 H. 5. 5.

(c) And if he does not say so in the Writ, it shall abate. 18 Ed. 2. *Brief* 834.

(d) But if there be a Diversity of Names in this Case, on such Plea, &c. an *Exigi de novo* shall issue against the other; per *Hull*, 14 H. 4. 27. and so in a *Præcipe*, *Summons ad warrantizand'*, &c. 19 H. 6. 58.

(e) Note; At the *Pluries Capias* one appeared who had the same Name, and the Plaintiff said he was not the same Person; and for that he had not put the Diversity of the Names in his Writ, it abated. 22 Ed. 4. 14. 8 Ed. 3. 19. 18 Ed. 2. *Brief* 834.

Writ de Homagio respectuando.

A **T**HE Writ of Respite of Homage lieth, when the Heir comes of full Age who holdeth of the King *in Capite*, and ought to sue his Livery, then the Order is, that he first do Homage to the King, and thereupon to have his Writ of Livery to the Escheator; but the King of Grace and Favour may respite his Homage as he pleaseth: And thereupon he shall have a Writ unto the Escheator testifying the same, and commanding him to deliver him Seisin of the Lands; and the Writ shall be such (a):

The King to his beloved, &c. his Escheator, &c. Know you, that we have respited the Homage of I. the Sister and Heir of I. the Son of T. of B. deceased, due to us for all the Lands and Tenements which the aforesaid I. her Brother held of us in Chief, on the Day when he died, until the Feast of Saint Michael next coming, and have rendred unto him those Lands and Tenements: And therefore we command you, that having received Security, &c.

(b) *Writ de Hæretico comburendo.*

B **N**OTE, It appeareth by *Britton* in his Book, that those Persons shall be burnt who feloniously burn others Corn, or others Houses, and also those who are Sorcerers or Sorceresses; and Sodomites and Hereticks shall be burnt; and it appeareth by that Book, *lib. 1. cap. 17.* that such was the Common Law. (c) But note, That the Person who shall be burnt for Heresy ought to be first convict thereof by the Bishop who is his Diocesan where he dwelleth, and abjured thereof, and afterwards, if he relapse into that Heresy or any other, and thereof be condemned in the said Diocese, then he shall be sent from the Clergy to the secular Power, to do with him as it shall please the King, &c. And then it seemeth the King, if he will, may pardon him the same; and the Form of the Writ is such:

C *The King, &c. to the Mayor and Sheriffs of London, greeting: Whereas the venerable Father Thomas Archbishop of Canterbury, Primate of all England, and Legate of the Apostolic See, with the Consent and Assent, of the Bishops and his*

(a) But if the Lord takes Homage of the Heir within Age, he is thereby out of Ward, *per Bro. Homage 9. vide Ant. 142. con.* and to the Law seems to have altered in this Point.

(b) Note; Until the Time of *H 4.* no Person was put to Death for Opinions in Religion in *England*: See the Reason hereof in *Taylor's Liberty of Propheying*, p 1025. *sect. 13.* *Baker's History* 345 and *Sanderfon's History* 10.

See the Cases of *Anne Knell* and *Anne Askew*, burnt 4 *Ed 6.* for denying Christ to have taken his Flesh of the Virgin *Mary*. *Heylin's History* 88, 89. and *Burner's History of the Reformation*,

first Part 27. where the Temporal Courts adjudged what was Heresy. See also good Matter in *Petit, Brook 458.* and *13 Co. 59. Mutton's Case.*

(c) See *12 Co. 56, 57, 93.* That by the Common Law no Bishop could convict of Heresy as to Loss of Life, but only as to Penance & *pro salute Animæ*: But in the Case of Life, the Conviction by the Common Law ought to have been before the Archbishop in Convocation.

See *Petit's Collections* 72, 73. the Writs and Process for burning *Barthol. Legate* and *Anne Wightman*. *Temp. Jac. 1.*

Writ de Hæretico comburendo.

Brothers the Suffragans, and also of the whole Clergy of his Province (a) in his Provincial Council assembled, the Orders of Law in this Behalf requisite being in all Things observed, by his definitive Sentence pronounced and declared W. Sawtre (sometime Chaplain condemned for Heresy, and by him the said W. heretofore in Form of Law abjured, and him the said W. relapsed into the said Heresy) a manifest Heretic, and decreed him to be degraded, and hath for that Cause really degraded him, from all clerical Prerogative and Privilege, and hath decreed him the said W. to be left, and hath really left him, to the Secular Court, according to the Laws and canonical Sanctions set forth in this Behalf, and holy Mother the Church hath nothing further to do in the Premisses: We therefore, being zealous for Justice, and a Lover of the Catholic Faith, willing to maintain and defend holy Church, and the Rights and Liberties thereof, and (as much as in us lies) to extirpate by the Roots such Hæresies and Errors out of our Kingdom of England, and to punish Heretics so convicted with condign Punishment; and being mindful that such Heretics convicted in Form aforesaid, and condemned according to the Law Divine and Human by canonical Institution, and in this Behalf accustomed, ought to be burnt with a burning Flame of Fire, we command you, most strictly as we can, firmly joining, that you commit to the Fire the aforesaid W. being in your Custody, in some publick and open Place within the Liberties of the City aforesaid, before the People publickly, by reason of the Premisses, and cause him really to be burnt in the same Fire, in detestation of this Crime, and to the manifest Example of other Christians: And this you are by no Means to omit, under the Peril falling thereon. *Witness, &c.*

(b) And by that Writ it appeareth, that a Man ought to be convicted of **D** the Heresy by the Archbishop and all the Clergy of that Province, and abjured for the same, and afterwards anew convicted and condemned by the Clergy of the same Province, and that in their general Council of Convocation. But now by the Statute of *Hen. 4. cap. 15.* it is enacted, That every Bishop in his Diocese may convict a Man of Heresy, and abjure him, &c. and afterwards convict him anew thereof, and condemn him, and warn the Sheriff or other Officer to apprehend him, and burn him, &c. And that the Sheriff or other Officer ought to do the same by the Precept of the Bishop, and without any Writ from the King to do the same. And that is the Cause (as it seemeth) that that Writ is not put into the new Registers, because that Writ ought not at this Day to be sued forth, but is as it were void by Reason of the said Act.

(c) But now by the Statute made *Anno 25 H. 8. c. 14.* that Statute which was made *Anno 2 H. 4.* is repealed and made void. And now it is enacted by this late Statute, that he who is abjured for Heresy, and afterwards falleth into

(a) See *Bro. Heresy* 1. That if one will abjure a second Heresy, yet he shall be burnt; and that altho' the second Heresy be in another Point of Faith. See *Instit. Juris Canon.* 144, 145.

(b) See the Book of Entries Tit. *Indictment*, an Indictment before Commissioners for Heresy, a *Capias* awarded, and the Party delivered to the Ordinary.

(c) See the Statutes, and note by 25 H 8. c. 14. the Stat. 2 H. 4. is repealed; and by 1 Elis.

c. 12. the Statute 5 R. 2. c. 5. and 2 H. 5. c. 7. and 25 H. 8. c. 14. are repealed; and by 1 & 2 Ph. & Mar. c. 6. the Statutes 5 R. 2. 2 H. 4. and 2 H. 5. are revived; and by Statute 1 Eliz. c. 1. the Stat. 1 & 2 P. & M. c. 6. and 5 R. 2. 2 H. 4. 2 H. 5. are all repealed; so that this now stands as at Common Law before those Statutes.

And Note; By the Statute 29 Car. 2. c. 9. this Writ de Hæretico comburendo is abolished. *Laus Dio.*

Relapse

Relapfe, and is convicted thereof before the Ordinary, that yet the Ordinary ought not for to commit him to the Lay Power to be burnt, without the King's Writ first obtained for to burn him, as appeareth by the said Statute of 25 H. 8. cap. 14. more at large. [270.]

Writ upon the Statute of Marlebridge for a Fine for Non-fair pleading.

A **T**HE Writ upon the Statute of *Marlebridge* for not fair Pleading lieth, where the Sheriff or other Bailiff in his Court will take a Fine of the Party, Plaintiff or Defendant, because he did not plead fairly, &c. And the Writ shall be directed to the Sheriff himself, or Bailiff, or him who will demand such Fine; and it is a Prohibition to him, commanding him that he do not demand such Fine; and it may be sued by the whole Hundred, or by all the County together, where he will require such Manner of Fine of them; and the Writ is such:

B *The King to the Sheriff, &c. Whereas it is provided by the Common Council, &c. that neither in the Circuits of Justices, nor in Counties, Hundreds, or in Courts Barons, from thenceforth any Fines shall be taken of any Man for fair Pleading, nor so that any Occasion shall be; We command you, that for the Time to come you do not exact, or cause to be exacted of W. such Fine, against the Form of the Provision aforesaid; And the Distress, if any, &c.*

And for the Hundred the Writ shall be such: *We command you, that for the Time to come you do not exact, or cause to be exacted from the Commonalty of the Hundred of I. such Fine, against the Form, &c.*

C And by the Rule in the Register it may be against every other Man who will distrain for such Fine, and he may have an *Alias* and a *Pluries*, and an Attachment upon the same: And if after the first Writ of Prohibition delivered he distrain for such Fine, then the Party who is distrained may sue forth an Attachment against the Sheriff or Bailiff, or him who distraineth him; and the Form of the Attachment is such:

The King to his Coroners in the County of Lincoln, greeting: If A. shall make you secure, &c. then put, &c. B. our Sheriff, or our Sheriff of the County aforesaid, that he be before our Justices, &c. to shew wherefore, whereas it is provided by the Common Council, &c. (as above) of any Man for fair Pleading, nor so that any Occasion shall be, the said Sheriff, (or the said Bailiff) hath distrained the said A. for such Fine to be paid in the County aforesaid, against the Form of the Provision aforesaid, and against our Prohibition; and have there, &c. and in the mean Time cause the Beasts of him the said A. taken upon that Occasion, to be delivered. Witnesses, &c.

But note, That he may sue forth that Writ of Attachment against the Sheriff, or other, altho' that he never sueth forth any Writ of Prohibition before directed to the Sheriff or Bailiff; but then he ought for to be distrained for that Fine; for the Statute in itself is a Prohibition to the Sheriff, and to all others, that they do not distrain for such Fine for fair Pleading; but if the Sheriff, or other

Attachment upon a Prohibition. Br. 13. Vide 9H. 6. 61. & 19H. 6. 54. Ascue.

Grants made by the King, &c.

other, demand such Fine, and doth not distrain for the same, then he cannot have a Writ of Attachment for such Demand made, because he is not damnified by the Demand, &c.

Grants made by the King expressed and contained in the Register, to be remembered.

THE King to the Bailiffs and honest Men of the Town of P. greeting: Know D you, that of our especial Favour we have granted to you in Aid of paving the said Town, that from the Day of the making these Presents, until the End of five Years next following, you may take in the said Town the Customs underwritten, to wit, For every Carriage on Horseback, &c. And therefore we command you, that you take the said Customs until the End of the said Term, as before is said; but the said Term of five Years being compleated, the said Customs shall absolutely cease and be taken away. In Witness, &c.

Grant of a Stewardship.

THE King, &c. Know you, that we have granted to our beloved and faithful E W. of H. the Office and Government of the Stewardship of, &c. with all Things belonging to the said Office, during our Pleasure: And therefore we command you, that you obey, answer, and faithfully attend him the said W. in all Things as Steward. In Witness whereof, &c.

Grants of Letters Patent.

SEE in the Register notable Forms of Grants of Letters Patent made by F the King in divers Manners, especially among the Writs of *Ad quod Damnum*, and also after the Writs *de Corrodio habendo*. And there is a Patent made, Of the Custody of the King's Forest, in recompence of a certain Sum granted to any one by the King for his Life.

And other Patents there made upon Indentures between the King and others, upon a borrowing of Money by the King, by which Patents the King doth grant to hold and keep Covenant, &c.

The Grant of the King of the first Benefice which shall happen void is such:

The King to his Chancellor who now is, or who shall be so for the Time being, or Keeper of his Great Seal, greeting: We heartily desiring the Promotion of our beloved Clerk A. for his good Service done, as well to Lord Edward some time King of England our Grandfather, as for us, and willing to follow him (from the Consideration premised) with our gracious Favour, Will that he the said A. be presented to the first Ecclesiastical Benefice that shall become void, exceeding the Taxation of twenty Marks, which shall belong to our Presentation, and which he shall

shall think fit to accept: And therefore we command you, that you cause him the said A. to have our Letters of Presentation to the first Ecclesiastical Benefice that shall become Vacant, which shall so belong to us, and which he shall think fit to accept, under our Great Seal in Form aforesaid. In Witness whereof, &c. Witness, &c.

But such Grants are not in Use at this Day.

- A A Grant of the King to one of his Chaplains of a yearly Pension out of the Exchequer, until he be promoted unto a Benefice, is thus:

The King to all to whom, &c. greeting: We regarding the grateful and laudable Services which our beloved Clerk A. hath before these Times willingly done for us, whereof we are certainly informed, as well by our beloved and faithful W. as by others our faithful Subjects, hoping that in our Business to be done, from the Purity of his Affection and Benevolence he will continue in successive Acts for the Future, and willing to follow him with our gracious Reward, have granted to him a certain annual Pension of twenty Marks, to be received every Year at our Exchequer, at the Feasts of Easter and St. Michael by equal Portions, until he shall by us be provided within our Realm of England of an Ecclesiastical Benefice which he shall think fit to accept. In Witness, &c. Witness, &c.

- B There is another Grant in the Register, fol. 295. made by the King to one, to give him Authority to reconcile the King's Enemies who have left their Obedience, and adhered unto other the King's Enemies, &c. and to grant Pardon to them; and the Grant is such:

The King to all and singular, &c. to whom, &c. greeting: Know ye, that we fully confiding in the approved fidelity and provident Circumspection of our beloved and faithful Anthony Lucy, have given to him the said Anthony, by the Tenor of these Presents, full Power of receiving to our Faith and Peace, the Men of the Parts of Galloway in Scotland, not being in our Faith and Peace, and others who adhere, or have adhered to the said Scots against us, and with them were Enemies against us, and who are willing to come to our Faith and Peace, and whom he shall see fit to be admitted to our Faith and Peace; and in our Name to make Letters of Pardon of such Adhering and Enmity, and also of such Admission to our Peace, to those Men for their Security in this Behalf, to be accounted firm and free whatsoever the said Anthony shall do in our Name in the Premises. In Witness, &c. Witness, &c.

- C There is another Grant made unto one of the Custody of a Castle, and the Ammunition therein, for what Time it shall please the King, and a Writ thereupon directed to him who had the Custody thereof before, to deliver to him the Castle, and the Implements and Things appertaining to the same.

And you may see there the Patents made to Sheriffs to be Sheriffs to the Counties, and also the Patents made to the Escheators of the Counties, and also the Writs to the old Sheriffs and Escheators to deliver unto them the Rolls and Writs, &c.

- D And Letters Patent of Attendants unto Archbishops, Abbots, and all others, to be Attendants unto them in those Things which do appertain to their Office. The Form of Nomination to be made by the King to an Abbey or other Person. Of one to be Vicar, and that the Abbot do present him over to the Ordinary. And also the Form of Revocation made by the King of that Nomination. And also the Form of the Writ which the King sends to the

the Ordinary to admit of that Revocation, and to admit another Person by another Nomination. All these appear in the Register, *fol.* 302.

And divers other Presentations made by the King, and also Revocations of his Presentation; and also Nominations made by the King in his own Right, or in the Right of others, are there in the Register; and Grants made by the King of Donatives, and the Writs directed unto the Sheriff to put them in Possession; and Writs there to the Ordinary, to assign unto a Prebendary *a Stall in the Choir, and a Place in the Chapter*, who hath the Prebend by the King's Collation; and divers Ratifications there made by the King to divers Incumbents of Churches, or Prebends, which they have in Possession as Incumbents, &c.

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And divers Forms of Writs of Proxy are in the Register, to sue, defend or E answer, &c. or to resign a Benefice, &c.

And the Form of the Resignation, &c. and the Form to make Protestation F when a Man will resign his Benefice, &c. appear in the End of the Register, in *fol.* 302. and in other *Folio's* there following.

And so endeth this present Treatise, called, New Natura Brevium, which Book fully declares the Natures of the Original Writs contained and expressed in the Register.

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